

EXHIBIT

13

Page 2

1 APPEARANCES CONTINUED:

2 MS THERESA NOBLE HILL, Attorney at Law, of the
 3 firm Rhodes, Hieronymus, Jones, Tucker & Gable, ONEOK Plaza,
 4 100 W 5th Street, Suite 400, Tulsa, Oklahoma 74103,
 5 appearing on behalf of the DEFENDANT CARGILL, INC. & CARGILL
 6 TURKEY PRODUCTION, LLC

7 MR MICHAEL R BOND, Attorney at Law, of the firm
 8 Kutak Rock, The Three Sisters Building, 214 West Dickson
 9 Street, Fayetteville, Arkansas 72701, appearing on behalf of
 10 the DEFENDANT TYSON FOODS, INC., TYSON POULTRY, INC.,
 11 TYSON CHICKEN, INC. & COBB-VANTRESS, INC

12 MR PAUL E THOMPSON, JR., Attorney at Law, of the
 13 Bassett Law Firm, 221 North College Avenue, P.O. Box 3618,
 14 Fayetteville, Arkansas 72702, appearing on behalf of the
 15 DEFENDANT GEORGE'S, INC. & GEORGE'S FARMS, INC

16 MS VICKI BRONSON, Attorney at Law, of the firm
 17 Connor & Winters, 211 E Dickson Street, Fayetteville,
 18 Arkansas 72701, appearing on behalf of the DEFENDANT
 19 SIMMONS
 20 FOODS, INC

21 ALSO PRESENT: BARBARA RAUSCH

22 *****

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1 CONTENTS

2 Direct Examination by Ms. Longwell.....4

3 *****

4 EXHIBITS

5 (Exhibits 1 through 44 marked for
 6 identification. See "Exhibit" in word index.)

7 *****

8 STIPULATIONS

9 It is hereby stipulated and agreed by and
 10 between the parties hereto, through their
 11 respective attorneys, that the deposition of
 12 Rhonda Craig may be taken on behalf of the
 13 Defendants, on November 27, 2006, in Oklahoma
 14 City, Oklahoma, by Daniel Luke Epps, Certified
 15 Shorthand Reporter within and for the State of
 16 Oklahoma, pursuant to agreement.

17 It is further stipulated and agreed by and
 18 between the parties hereto, through their
 19 respective attorneys, that all objections, except as
 20 to the form of the question and the responsiveness
 21 of the answer, are reserved until the time of trial,
 22 at which time they may be made with the same
 23 force and effect as if made at the time of the
 24 taking of this deposition.

25 *****

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1 WHEREUPON,

2 RHONDA CRAIG

3 of lawful age, having been first duly sworn,
 4 deposes and says in reply to the questions
 5 propounded as follows:

6 DIRECT EXAMINATION

7 BY MS. LONGWELL:

8 Q Good morning. My name is Nicole
 9 Longwell, and I'm here on behalf of Peterson
 10 Farms, and I'm going to go ahead and let counsel
 11 around the table introduce themselves as well.

12 MR. BEATY: I'm Tyler Beaty also on
 13 behalf of Peterson Farms.

14 MS. HILL: Theresa Hill on behalf of
 15 Cargill, Inc., and Cargill Turkey Production, LLC.

16 MR. BOND: Michael Bond on behalf of
 17 Tyson Foods, Inc., Tyson Chicken, Inc., Tyson
 18 Poultry, Inc., and Cobb-Vantress, Inc.

19 MR. THOMPSON: Paul Thompson, Junior,
 20 on behalf of George's.

21 MS. BRONSON: Vicki Bronson on behalf
 22 of Simmons.

23 Q (BY MS. LONGWELL) And now that you
 24 know us, I think there may be counsel that are
 25 here on behalf of the state that may want to I

Page 5

1 think -- you can introduce yourselves

2 MR. NANCE: Robert Nance for the state
 3 of Oklahoma.

4 MR. HAMMONS: Trevor Hammons for the
 5 state of Oklahoma.

6 Q (BY MS. LONGWELL) If you wouldn't
 7 mind, please, stating your name for the record.

8 A Rhonda Craig.

9 Q Rhonda, have you ever given a deposition
 10 before?

11 A Yes, I have.

12 Q Just assuming that you're familiar
 13 somewhat with how this process goes, I just would
 14 like to make sure from the front end that we agree
 15 on a couple of things. First is if you don't
 16 understand my question, that you tell me that you
 17 don't understand my question, and then I can
 18 rephrase the question that maybe that you may be
 19 able to understand it better

20 A Okay.

21 Q If you -- I would -- and I'm sure the court
 22 reporter would appreciate this as well, that if I
 23 have asked a question, I'm going to be respectful
 24 of the fact that you're giving an answer, and I
 25 won't interrupt you, and if the same would apply

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1 that sometimes you may feel like you know exactly
2 what I'm going to ask you, but if you'll let me
3 finish my question and then answer it, that will
4 help to make a better record and help Luke a little
5 bit in keeping track of what's being said. Also
6 this isn't meant to be a marathon. If you need to
7 get up to go to the restroom, or just to stretch, or
8 a break of any kind, please let me know. I'm not
9 here to torture you, and so I just want -- just let
10 me know. Is that acceptable to you?

11 A Yes.

12 Q Okay. Could you please tell me your job
13 title?

14 A I'm an administrative programs officer.

15 Q Okay. And you work here at the
16 Oklahoma Department of Environmental Quality?

17 A Yes.

18 Q Tell me what your responsibilities
19 include.

20 A I am a central records manager for the
21 DEQ. I manage the records for the agency and
22 supervise the clerical people who have custody of
23 the records.

24 Q Okay. Are your responsibilities limited to
25 this office only or are you responsible for

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1 I mean, for the Illinois Watershed, how many other
2 offices would contain documents that are relative
3 to the Illinois river?

4 A Approximately three of our offices.

5 Q And where are those offices located?

6 A I believe they are in Jay, Tahlequah, and
7 if I may refer to my notes, and Roland.

8 Q And Roland. What type of documentation
9 is maintained at those offices?

10 A Requests for services.

11 Q Okay. In response to the discovery
12 requests that were served upon the Oklahoma
13 Department of Environmental Quality, are there
14 documents that are responsive to those requests
15 that are located at those locations?

16 A Yes.

17 Q And we'll go into detail what those are as
18 we go through this. I'm not going to try to get you
19 all by memory, but we'll go through these
20 discovery requests. Did you as the records
21 custodian for the ODEQ, did you enlist assistance
22 from other individuals within the ODEQ to obtain
23 documents that were responsive to the discovery
24 requests?

25 A Yes.

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1 managing documents for the entire agency
2 meaning various other locations?

3 A I do not have custody of the documents in
4 the other locations. They have people there who
5 have control of those records.

6 Q Are you familiar with what documents are
7 maintained at other locations for the agency?

8 A Yes.

9 Q Okay. Can you tell me structurewise
10 where we sit today at 707 North Robinson Avenue,
11 this is the main office for the Oklahoma
12 Department of Environmental Quality, is that
13 correct?

14 A Yes.

15 Q Are there other locations in the state of
16 Oklahoma for the Oklahoma Department of
17 Environmental Quality?

18 A Yes.

19 Q Can you tell me how many other locations
20 there are?

21 A Approximately 30 some offices.

22 Q Are they based upon a county -- regions
23 or counties or how are they based?

24 A Region and county.

25 Q Region and county. For the Oklahoma --

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1 Q Okay. Instead of saying the discovery
2 requests, let me provide you an exhibit that I'm
3 marking as Exhibit 1 to your deposition, and if
4 you would take a moment to look through those
5 and just verify that those are the -- that you've
6 seen this document before.

7 (Exhibit-1 marked for identification)

8 A I've not seen this document.

9 Q Okay. Let me hand you a document I'm
10 going to mark as Exhibit 2 to your deposition.
11 Could you review Exhibit 2 and tell me if you've
12 seen this document before?

13 (Exhibit-2 marked for identification)

14 A I have seen this document.

15 Q Okay. Is this the document that you used
16 in order to gather the documents responsive to our
17 requests?

18 A Yes.

19 Q Okay. So we'll work from Exhibit 2 at
20 this point.

21 A Okay. Okay.

22 Q Can you provide me the names of the
23 individuals that assisted you in gathering
24 documents that were responsive to these discovery
25 requests contained in Exhibit 2 before you?

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1 A I can. It's a long list.
 2 Q Okay. What you can recall, please.
 3 A Jerry Perrin, Ellen Akin, Sandra McClain,
 4 Sara Byers, several temps within our division,
 5 Madison Johnson, Marilyn Miller, Thomas Zigler,
 6 Kyra Bennett. Those are within the central
 7 records group.
 8 Q Okay.
 9 A And then within the other divisions,
 10 would you like those names?
 11 Q Yes. Please provide those names as well.
 12 A Mark Derichsweiler, Bob Bednar, David
 13 Pruitt, David Dyke, Barbara Rausch, Gary, the
 14 director of ECLS. I forgot his last name. I'm
 15 sorry. Don Hensch. I'm sorry. I'm racking my
 16 brain to think. Greg Garber. That's all I can
 17 think of for now, but there may be more that I'm
 18 just not recalling.
 19 Q If you recall the name of any individual
 20 while we're having this deposition, if you would
 21 just provide that to me, and just say I remembered
 22 a name from the list earlier --
 23 A Okay.
 24 Q -- and here that name is?
 25 A Okay.

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1 Q And especially if you remember the
 2 director of ECLS, Gary's last name at some point,
 3 that will be helpful as well.
 4 A I'm sorry.
 5 Q That's all right. Can you tell me the
 6 various divisions that you coordinated with under
 7 ODEQ to gather information responsive to these
 8 requests?
 9 A Sure. Air quality, land protection,
 10 environmental complaints and local services,
 11 administrative services, and legal division, water
 12 quality, and customer services division.
 13 Q All right. Let's go ahead and get started
 14 looking at Exhibit 2, the specifics of the requests
 15 that were propounded to the Oklahoma Department
 16 of Environmental Quality. I've got page 6 of
 17 Exhibit 2 being where we start. Look at Request
 18 Number 1, it specifically asks that the Oklahoma
 19 Department of Environmental Quality produce all
 20 documents and data related to permits, orders,
 21 notices of violations, complaints, investigations
 22 issued, undertaken or contemplated by the ODEQ,
 23 whether or not completed and any other
 24 documentation related to any sand, gravel or other
 25 mining operations in the Illinois River Watershed

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1 from 1980 to the present. In your search for
 2 these documents, were you able to identify any
 3 documents back to 1980?
 4 A We do have documents, but I can't
 5 identify the specific documents to you.
 6 Q Okay. Were you able to identify permits
 7 related to sand, gravel or other mining operations
 8 in the Illinois River Watershed?
 9 A Yes.
 10 Q Have those been provided?
 11 A Yes.
 12 Q From 1980 forward, present.
 13 A Yes.
 14 Q And were you able to identify any orders
 15 or notices of violations? Let me start with orders.
 16 Were you able to identify any orders from any
 17 sand, gravel or other mining operations in the
 18 Illinois River Watershed?
 19 A We did not identify them specific to that.
 20 We pulled all NOV's from that date forward.
 21 Q From 1980 forward?
 22 A Yes.
 23 Q For sand, gravel or other mining
 24 operations?
 25 A Anything -- yes. It would include that in

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1 those records.
 2 Q Okay. So you pulled all notices of
 3 violations that the ODEQ would have for any point
 4 or non point source in the Illinois River
 5 Watershed--
 6 A Yes.
 7 Q -- from 1980 forward?
 8 A That's correct.
 9 Q Okay. And you may have to remind me of
 10 that as we go through here whenever we come
 11 across notices of violation.
 12 A Okay.
 13 Q And all those are located upstairs?
 14 A Yes.
 15 Q Are they -- are they specifically -- I
 16 noticed that when we went upstairs earlier there
 17 were boxes for each division. Are there notices of
 18 violation that are located in each division or are
 19 they centrally located in a particular box?
 20 A NOV's will be located in the legal boxes.
 21 Q Okay.
 22 A And possibly also in the water quality
 23 boxes within the facility.
 24 Q Okay. Would the same be true for any
 25 complaints?

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1 A Complaints will be within the ECLS
2 boxes.

3 Q Okay. And were you -- did you pull all
4 complaints that were related to or involved the
5 ODEQ within ODEQ's possession for any type of
6 operation within the Illinois River Watershed from
7 1980 to the present?

8 A That's correct.

9 Q Okay. It also asks for investigations.
10 Did you provide documents and data related to
11 investigations that involved the ODEQ related to
12 any sand, gravel or other mining operations in the
13 Illinois River Watershed from 1980 forward?

14 A We provided all documents related to the
15 Illinois River Watershed. If investigations are
16 included, they would be within those documents.

17 Q Okay. What about ongoing
18 investigations? Were those excluded from your
19 production?

20 A No.

21 Q Okay. Would they -- are they located in
22 any specific divisions boxes or are they -- would
23 they follow the same patterns as the notices of
24 violation?

25 A The same pattern. Investigations could

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1 may not be records that we brought over from the
2 health department in our custody that could
3 include those types of documents.

4 Q If those documents had existed at the
5 health department, what agency would then have
6 control over those documents if they still existed
7 today?

8 A Quite possibly we have some. I don't
9 know.

10 Q I just want to verify that -- I'm going to
11 provide you what I'm going to mark as Exhibit 3 to
12 your deposition. In the lower right-hand corner of
13 this document, the first line says DEQ Form
14 Number 630-577A. Do you see that?

15 (Exhibit-3 marked for identification)

16 A Yes.

17 Q Okay. This is the current form that the
18 ODEQ uses with regards to the monthly operations
19 reports for point sources, is that correct, large
20 surface -- sorry, large surface water systems?

21 A To my knowledge, yes.

22 Q Okay. Are you aware of whether there are
23 any other types of forms that have been used in
24 the past related to large surface water systems?

25 A I don't know.

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1 be included in legal.

2 Q Okay.

3 A Most likely are in the legal files.

4 Q Okay. Were there any documents or any
5 permits, orders, notices of violations, complaints,
6 or investigations, data or documents related to
7 investigations for any sand, gravel or other mining
8 operations in the Illinois River Watershed from
9 1980 to the present that were not -- have not been
10 produced upstairs?

11 A No.

12 Q Let's look at Request Number 2. Request
13 Number 2 is looking for all documents and data
14 related to the monthly operational reports, which
15 is Form 630-577A, for any large surface water
16 systems in the Illinois River Watershed from 1980
17 to the present. Have those been provided to us?

18 A Yes.

19 Q From 1980 to the present?

20 A From what we have.

21 Q What you have. Okay. Let's talk about
22 that then, 1980. What would not have been
23 included?

24 A The agency -- the agency came into
25 existence in '94, so any records -- there may or

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1 Q When you provided documents responsive
2 to this request, did you limit your search to just
3 these forms or did you provide any other
4 documentation or data related to these forms?

5 A We did not pull -- we provided other data.

6 Q You provided other data?

7 A Yes.

8 Q What type of other data would be
9 associated with a monthly operational report?

10 A When I say we provided other data, the
11 way in which we pull the records specifically, we
12 pulled within the Illinois River Watershed from
13 1980 forward, so all data would be inclusive in
14 those records.

15 Q How are these monthly operational
16 reports maintained by the ODEQ?

17 A They are within the water quality
18 divisions permit -- permitting records, and they
19 are filed in File 4 of the water quality files for
20 MOR's.

21 Q And is there a file basically that's
22 maintained for each of the large surface, I'm going
23 to try to use the right word here, large surface
24 water systems? Is there a file that's maintained
25 that contains each one of these monthly --

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1 A Yes.
 2 Q Are they also maintained electronically on
 3 any kind of database here at the ODEQ?
 4 A I don't know.
 5 Q Who would know the answer to that
 6 question?
 7 A I don't know.
 8 Q Okay. So within those files that are
 9 these water quality division files that contain
 10 these monthly operational reports, are you
 11 familiar with what other types of documentation is
 12 maintained in those files?
 13 A I believe it's only the MOR's.
 14 Q Okay. I guess I'm just -- because I'm not
 15 that familiar with what's upstairs, my questions
 16 may seem a little searching and they are.
 17 A Sure.
 18 Q And one of the questions I have is this
 19 request specifically asks for all documents and
 20 data that might be related to this particular form,
 21 obviously not limiting it to just this form. I
 22 thought I understood you to say that there are
 23 other documents and data that are related to this
 24 form that have been -- that are identified upstairs
 25 as well.

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1 A I don't know.
 2 Q You don't know. Okay. Let me hand you
 3 what I'm going to mark as Exhibit 4 to your
 4 deposition. I'm also going to go ahead and hand
 5 you in coordination with that what I'm going to
 6 mark as Exhibit 5. We can just talk about them at
 7 the same time. If you wouldn't mind handing that
 8 to Bob, his copy. Okay. The two documents that
 9 I've, the documents that I've handed to you, the
 10 first document I handed to you I believe at the top
 11 it says Oklahoma Department of Environmental
 12 Quality turbidity trigger evaluation form, systems
 13 with a population greater than, with a greater
 14 than sign, 10,000, and then the second document
 15 which is identified as Exhibit 5 to your deposition
 16 is Oklahoma -- titled Oklahoma Department of
 17 Environmental Quality turbidity trigger
 18 evaluations form, systems with a population less
 19 than -- or less than or equal to 10,000, is that
 20 correct?
 21 (Exhibits-4-and-5 marked for
 22 identification)
 23 A That's correct.
 24 Q And have you seen these forms before?
 25 A I have seen these forms within the water

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1 A I guess my understanding of "related"
 2 means specific to a facility.
 3 Q Okay. And you're saying anything related
 4 to a specific facility has been provided?
 5 A Yes.
 6 Q Okay. Do you know if there's any -- in
 7 the water quality division, if there's any other
 8 internal forms that are created as a result of the
 9 point source turning over this monthly operational
 10 report?
 11 A I don't know.
 12 Q Okay. Let's move on to Request Number
 13 3. It says, "Produce all documents and data
 14 related to the turbidity trigger forms from 1980 to
 15 the present for any public water supply system in
 16 the Illinois River Watershed from 1980 to the
 17 present." Have you provided all documents that
 18 you believe to be responsive to this request
 19 upstairs in the boxes?
 20 A Yes.
 21 Q Okay. And the difference between -- and
 22 maybe you don't know the answer to this, and if
 23 you don't, please tell me, the difference between a
 24 large system and a small system under ODEQ as to
 25 the size of the population?

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1 quality files.
 2 Q And are these -- have the forms for any
 3 public water supply system either small or large,
 4 have these forms been provided and the documents
 5 that have been identified as responsive upstairs?
 6 A Yes.
 7 Q And once again from 1980 to the present,
 8 would the qualification of the 1994 -- some of
 9 these documents were held in 1990 -- prior to
 10 1994 by the Health Department, is that correct?
 11 A Yes.
 12 Q That still applies to these forms as well?
 13 A I don't know. This appears to be a DEQ
 14 form that perhaps the Health Department didn't
 15 have. I don't know.
 16 Q Okay. Have you seen any other variations
 17 of these two forms that are identified in Exhibit 4
 18 or 5?
 19 A I have not.
 20 Q Okay. And just for clarity's sake, once
 21 again we asked for all documents and data related
 22 to, and you've indicated that for any public water
 23 supply system you have provided the water quality
 24 division files associated with that public water
 25 supply, is that correct?

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RHONDA CRAIG

November 27, 2006

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1 A That's correct.

2 Q So any other documents related to the
3 turbidity trigger forms, would they be included in
4 those files as well?

5 A To my knowledge, yes.

6 Q Okay. I'm going to go back for just a
7 second. You identified quite a few names of some
8 individuals who assisted you in gathering these
9 documents from the various divisions. Can you
10 tell me the individuals from the water quality
11 division that assisted you in gathering the
12 responsive documents to our requests?

13 A That was David Pruitt, Mark
14 Derichsweiler, Bob Bednar.

15 Q All right. Did you have -- when you were
16 communicating with these individuals, were you --
17 had you -- how did you direct them as to what you
18 wanted them to help you locate so that you could
19 produce for this particular document inspection?

20 A I held meetings with them to discuss the
21 requests.

22 Q Okay. And in those meetings, did you
23 give them specific instructions as to the specific
24 documents you wanted them to pull that were
25 responsive to the requests -- that you believe were

Page 24

1 of any other form that's been used as a monthly
2 operational report with regards to the small
3 surface water systems?

4 A I'm not aware of any.

5 Q Are there similar files that are -- for the
6 small surface water systems that are maintained
7 -- as they are maintained for the large system
8 water --

9 A Yes.

10 Q And have those been provided upstairs?

11 A Yes.

12 Q Has anything been excluded from those
13 files?

14 A No.

15 Q And, again, have you produced all those
16 that ODEQ has from 1980 to the present?

17 A Yes. I need to clarify that we have
18 produced what we have, but I cannot verify that it
19 goes back to 1980.

20 Q Right. Because of the limitation with
21 regards to the Health Development?

22 A Right. So we've produced everything in
23 our custody.

24 Q Okay. And when you say that, have you
25 searched through archived files?

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1 responsive to the requests?

2 A We discussed what was requested and we
3 -- and they had copies of this, so I wouldn't say I
4 directed them.

5 Q Okay.

6 A I requested, you know, assistance in
7 gathering these documents.

8 Q Okay. Were there any documents that
9 were specifically excluded from the collection of
10 data from the water quality division regarding the
11 Illinois River Watershed?

12 A No.

13 Q Let's move on to Request Number 4. It
14 says, "Produce all documents and data related to
15 the monthly operation reports for any small
16 surface water systems." There's a -- I'm going to
17 mark this as Exhibit 6 to your deposition. I
18 believe I'm at 6. Are you familiar with this form?
19 (Exhibit-6 marked for identification)

20 A Yes.

21 Q Okay. And in the lower right-hand corner
22 it states DEQ Form Number 630-577 Small,
23 correct?

24 A Correct.

25 Q Are you -- have you ever -- are you aware

Page 25

1 A Yes.

2 Q Is there a physical archive for ODEQ
3 located somewhere?

4 A Per division.

5 Q Okay. And where is the water quality
6 division archived files located?

7 A Several locations within the building

8 Q Within this building?

9 A Yes.

10 Q And what about the environmental
11 complaints -- let me get that division. Yeah,
12 ECLS. Are their archives located here in this
13 building as well?

14 A Yes.

15 Q Are there any other locations where
16 archived files would be located?

17 A For ECLS?

18 Q Yes.

19 A No.

20 Q Are there any maintained at these ODEQ
21 branch divisions, any archived files regarding
22 environmental complaints or ECLS?

23 A Yes. I guess you could call it that. When
24 I say that, they have records that are older, but I
25 don't believe they -- they say that they're archived

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1 or current. They're just -- all the records are
2 there.

3 Q Okay. So have you obtained any of the
4 records that are located at this Jay, Tahlequah, or
5 Roland branch and brought them here?

6 A No.

7 Q With regards to the requests that we've
8 already gone through, the monthly operational
9 forms for the large and small surface water
10 systems, would there be any of those forms
11 located in Jay, Tahlequah, or Roland?

12 A Not to my knowledge.

13 Q Okay. And what about the turbidity
14 trigger forms for either the small or -- well, I'll
15 say greater than or less than or equal to 10,000
16 population water supply systems? Are there any
17 of those located at Jay, Tahlequah, or Roland?

18 A Not to my knowledge.

19 Q All right. Then let's look at Request
20 Number 5, if you would with me, please. This
21 request is seeking all documents and data related
22 to the monthly operational report ground water
23 systems and specifically identifies Form 630-577B
24 for any systems located in the Illinois River
25 Watershed from 1980 to the present. Have you

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1 systems besides the one I have in front of you as
2 Exhibit 7?

3 A No.

4 Q And although it does say in the lower
5 left-hand corner it's revised in 3/01, has the form
6 generally been the same to your knowledge?

7 A To my knowledge.

8 Q Okay. And in your review and bringing
9 these documents or preparing these documents for
10 this production, were you able to specifically
11 identify any other forms that were used for the
12 purpose of a monthly operational report for
13 ground water systems?

14 A No.

15 Q Are there files maintained similarly to
16 those maintained for the surface water systems for
17 the ground water systems in the water quality
18 division?

19 A Yes.

20 Q And have those entire files been provided
21 for any system located in the Illinois River
22 Watershed?

23 A Yes.

24 Q Okay. Are there any documents or data
25 specifically related to the monthly operational

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1 provided all documents that are responsive to this
2 request, all monthly operational report ground
3 water systems forms --

4 A Yes.

5 Q -- for the Illinois River Watershed?

6 A Yes.

7 Q Does the same caveat apply with regards
8 to these ground water systems and the Health
9 Department and the problems with the records
10 from the Health Department from 1994 back to
11 1980?

12 A Yes.

13 Q I'm going to mark this as Exhibit 7 to
14 your deposition. Exhibit 7 is entitled Department
15 of Environmental Quality Monthly Operational
16 Report Ground Water Systems, is that correct?
17 (Exhibit-7 marked for identification)

18 A Yes.

19 Q And at the very bottom on the left-hand
20 corner it says DEQ Form Number 631-577B. Do
21 you see that?

22 A Yes.

23 Q Okay. Are you aware of any other forms
24 that are utilized for ground water system -- other
25 monthly operational report forms for ground water

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1 ground water systems that were not -- for any
2 system located in the Illinois River Watershed that
3 were not produced?

4 A No.

5 Q Let's look at Request Number 6. Request
6 Number 6 specifically asks for all documents and
7 data related to monthly operational report
8 purchase water systems chlorination facilities,
9 that's a mouthful, Form 630-577C for any systems
10 located in the Illinois River Watershed from 1980
11 to the present, is that correct?

12 A Yes.

13 Q I'm going to hand you what I'm marking
14 as Exhibit 8 to your deposition. Have you
15 produced for our review all monthly operational
16 report purchase water systems chlorination
17 facilities data and documentation related to that
18 for any system in the Illinois River Watershed
19 from 1980 to the present?

20 (Exhibit-8 marked for identification)

21 A Yes.

22 Q Okay. Are there any caveats with regards
23 to the date of how far back you went and were able
24 to obtain the information related to this specific
25 form?

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1 A Just the same as we've stated before.

2 Q Okay. The restriction of the fact that the
3 Department of Health -- this was under the
4 Department of Health prior to 1994?

5 A That's correct.

6 Q And that you're not confident that -- you
7 can't say with certainty that all the documents
8 were provided to ODEQ in 1994 when they took
9 over the responsibility for this?

10 A That's correct.

11 Q Okay. Looking at what I've marked as
12 Exhibit 8 to your deposition, the title of this
13 document is Department of Environmental Quality
14 Monthly Operational Report Purchase Water
15 Systems Chlorination Facilities, is that correct?

16 A Yes.

17 Q Would this be the document, the form,
18 that would be responsive to Request Number 6?

19 A Yes.

20 Q Okay. And are you aware of any other
21 previous forms that were used as a monthly
22 operational report for purchase water systems --
23 systems chlorination facilities?

24 A No.

25 Q Were there any -- was there any

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1 but I appreciate the candor. Thank you.

2 MS. HILL: So anything that has been
3 excluded or withdrawn will show up on a privilege
4 or confidentiality log, is that correct?

5 MR. HAMMONS: Yes.

6 MS. HILL: Okay.

7 MS. LONGWELL: They're going to provide
8 to us -- when you provide us the documents, is
9 there any way that we can possibly get that now?

10 MR. HAMMONS: Yeah.

11 MS. LONGWELL: I mean, just so my
12 co-counsel may get bored with what I'm asking
13 and may want to review, begin reviewing the
14 privilege log. Does anyone object to that?

15 MS. HILL: No, that's great. Do you want
16 to take a short break with that?

17 MS. LONGWELL: Yeah. Why don't we
18 take a short break and let you grab that?

19 (Short break at 11:08 a.m., resumed at
20 11:17 a.m.)

21 Q (BY MS. LONGWELL) Before our little
22 break we were talking about these forms that -- I
23 think we were on Request Number 6, I believe.
24 I'm going to backtrack real quick, if I may, and I
25 might be able to short circuit that, but do you --

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1 documentation or data identified as responsive to
2 this request which have not been provided to us
3 for review?

4 A No.

5 MR. NANCE: Counsel, if I may, I don't
6 know that it applies to anything you've covered so
7 far, but Mr. Hammons will provide you with a
8 privilege log before you begin the actual document
9 review.

10 MS. LONGWELL: Okay.

11 MR. NANCE: Ms. Craig doesn't know
12 what documents have been withheld on the basis
13 of privilege, and out of candor I want to let you
14 know that, but she won't know what, if anything,
15 has been taken from a file, and it will appear on
16 the privilege log, and I think it's important that
17 you understand that.

18 MS. LONGWELL: Sure. I understand
19 that.

20 MR. NANCE: Now is as good a time as
21 any to tell you.

22 MS. LONGWELL: And I understand that
23 with regard to privilege, but there also may be
24 things that she's excluded as being responsive,
25 and I'd like to question her about those as well,

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1 with regards to Request Number 2, I know that
2 you've identified that this is information that's
3 contained in the water quality division of ODEQ,
4 is that correct?

5 A That's correct.

6 Q Is there any other -- is there any other
7 division, excluding complaints and violations, is
8 there any other division that would have
9 information related to the monthly operational
10 reports for a large surface water system?

11 A No.

12 Q Okay. And where upstairs, if you could,
13 if you know, within the water quality division
14 boxes, would these forms be located?

15 A They are in boxes 1 through 21, file 4.

16 Q And moving on to Request Number 3, is
17 there any -- other than notices of violations,
18 orders, things regarding complaints, is there any
19 other division that would have information
20 regarding the turbidity trigger forms for the
21 public water supply systems in the Illinois River
22 Watershed?

23 A Not to my knowledge.

24 Q Okay. And where upstairs, if you know,
25 would these forms be located?

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1 A Boxes 1 through 21, file 3, and sometimes
2 file 4. And I'm sorry. That's water quality
3 division.

4 Q Okay. And I guess the question I have
5 since I'm just -- and I'm sorry, but since I'm not
6 that familiar with the boxes yet, are these forms
7 contained -- assuming -- okay. Let's say
8 Tahlequah is a public water supply system in the
9 Illinois River Watershed. Is there going to be a
10 file marked Tahlequah water supply or city of
11 Tahlequah water supply that's going to contain
12 these monthly operational reports, these turbidity
13 trigger reports or are they maintained separately?

14 A There will be a facility -- a facility file
15 which will include this file 3 and file 4.

16 Q Okay. Let's talk for a moment because
17 this may help me understand a little bit clearer,
18 and I can ask much more specific questions with
19 regards to these requests. What else would be
20 contained within the water quality division's
21 facility file besides the monthly operational
22 reports and the turbidity trigger forms?

23 A It will include the permit file,
24 correspondence, other reports.

25 Q Okay.

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1 Q And Request Number 5, monthly
2 operational report ground water systems, where
3 would those be located upstairs?

4 A Water quality division boxes 1 through
5 21, file 4.

6 Q And then the last document we looked at,
7 which I believe we left on Exhibit 8, was this
8 monthly operational report purchase water
9 systems chlorination facilities. Where would
10 those be located?

11 A Water quality division boxes 1 through
12 21, file 4.

13 Q Are you aware of any other division of the
14 Oklahoma -- I mean, of the Oklahoma Department
15 of Environmental Quality that would have
16 information related to these monthly operational
17 report purchase water system chlorination
18 facilities forms for water systems in the Illinois
19 River Watershed besides the water quality
20 division?

21 A No. I remember the name of the director.

22 Q Oh, you do. Could you tell me what that
23 name -- his name?

24 A Gary Collins.

25 Q Collins. Thank you very much.

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1 A Anything pertaining to that facility.

2 Q Okay. So now when I go through some of
3 these other additional requests, I may ask you if
4 that's contained within the water quality
5 division's facility file, and we'll both know what
6 we're talking about. We're talking about those
7 files that you just described to me.

8 A Sure.

9 Q And you've produced those in the -- as
10 they're maintained in the regular course of
11 business with the exception that they're sitting up
12 there in boxes as opposed to sitting in the file
13 drawers, is that correct?

14 A Yes.

15 Q Okay. You haven't specifically
16 reorganized them for the purpose of this discovery
17 review?

18 A No.

19 Q Looking at Request Number 4, would
20 those also be located in the water quality division
21 boxes 1 through 21?

22 A Yes.

23 Q Okay. And what file numbers would those
24 be maintained in?

25 A File 4.

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1 A You're welcome.

2 Q I'm going to hand you four exhibits that
3 I'm going to identify as Exhibits 9 through 12.
4 Looking at -- going back to the request, Request
5 Number 7 asks for all documents and data related
6 to public water supply disinfection byproducts
7 including but not limited to site forms including
8 all chlorite sample forms, total THM sample forms
9 for both surface and ground water, and TOC
10 sample site forms for any system located in the
11 Illinois River Watershed from 1980 to the present.
12 Did I read that correctly?

13 (Exhibits-9-through-12 marked for
14 identification)

15 A Yes.

16 Q Okay. It was a mouthful so I wondered,
17 but with regards to these, I've handed you what
18 I've marked as Exhibits 9 through 12 and the
19 first, Exhibit 9, the title of the document says
20 Chlorite Sample Site Form. Do you see that?

21 A Yes.

22 Q Are you familiar with -- have you -- are
23 you familiar with this form? I mean, have you
24 seen this form before in ODEQ's records?

25 A No.

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1 Q No. Okay. So can you tell me whether or
2 not this form is an actual ODEQ form?
3 A I cannot.
4 Q I mean, I'll represent to you I pulled
5 these off the website, but I don't see the nice
6 little thing at the bottom that says ODEQ form, so
7 I was trying to verify that this is, for the purpose
8 of authentication, that this is a Chlorite Sample
9 Site Form used by the ODEQ, and you're telling me
10 that you just can't tell me?
11 A Not at this time.
12 Q Okay. Exhibit Number 10, the title of
13 this document is Total Organic Carbon Sample
14 Site Form. Do you see that at the top?
15 A Yes.
16 Q And at the bottom on the left-hand side,
17 it says, "Return form to Dawn Grandits," I think
18 maybe. I may slaughter her last name, but water
19 quality division. Do you know -- have you seen
20 this particular form before?
21 A Yes.
22 Q Okay. And is this an ODEQ form?
23 A Yes.
24 Q And did you provide all of these -- did
25 you provide forms -- all of these forms Total

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1 A Not at this time.
2 Q But if it exists within ODEQ's records, it
3 would be maintained in the facility file?
4 A Yes.
5 Q Okay. Looking at Exhibit 12, the title of
6 that document is TTHM, forward slash, HAA5
7 Sample Site Form. Have you seen this file before --
8 this form before? Excuse me.
9 A No.
10 Q Okay. And if it is an ODEQ form, would
11 it be also located in the facility file?
12 A Yes.
13 Q Okay.
14 MR. BOND: Which file in the facility
15 file?
16 Q (BY MS. LONGWELL) Are the facility files
17 located at the water quality division files 1
18 through 21? Okay. Let me ask this question.
19 Strike that and let's go. Where are the facility
20 files located in the boxes provided upstairs?
21 A The facility files are included in boxes 1
22 through 72. They are broken down by program.
23 Q Okay.
24 A From public water supply to industrial
25 municipal sludge. So this particular request you

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1 Organic Carbon Sample Site Forms for any water
2 systems in the Illinois River Watershed from 1980
3 to present?
4 A Yes.
5 Q And where would these particular forms
6 be located in ODEQ's files?
7 A They would be in boxes -- water quality
8 division boxes 1 through 21, file 3.
9 Q Okay. So these are maintained in the
10 facility file?
11 A Yes.
12 Q Okay. Going back to Exhibit 9, if a
13 Chlorite Sample Site Form exists, would it be
14 maintained in the facility file?
15 A Yes.
16 Q In the water quality division files?
17 A Yes.
18 Q Okay. Exhibit 11, the title of that
19 document is TTHM, forward slash, HAA5 Ground
20 Water Sample Site Form. Do you see that?
21 A Yes.
22 Q Have you seen this specific form before?
23 A No.
24 Q Okay. So you couldn't tell me whether or
25 not this is an actual ODEQ form?

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1 will find responsive documents in boxes 1 through
2 21 for water quality division, file 3.
3 Q Okay. Thank you very much.
4 A You're welcome.
5 Q Is there any limitation to -- let's just talk
6 about the sample form you are familiar with since
7 it's the only one that you've indicated that you've
8 seen before. Is there any limitation to your
9 knowledge of ODEQ's ability to produce that
10 particular form for any facility from 1980 to the
11 present?
12 A Only to the extent that the agency came
13 into existence in '94 and --
14 Q The same exception we've talked about
15 before --
16 A The same exception. Correct.
17 Q -- with regards to the limitation of you're
18 not -- you can't confidently say that all of them
19 have been produced from 1994 to -- from 1980 to
20 1994?
21 A That's correct.
22 Q Okay. Have you seen any other forms --
23 are you aware of any other forms maintained by
24 ODEQ for -- that would reflect total THM samples
25 for surface and ground water in the Illinois River

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1 Watershed?

2 A I'm not aware of any.

3 Q And are you aware of any other forms that
4 have been utilized for chlorite samples for surface
5 and ground water systems located in the Illinois
6 River Watershed from 1980 to the present?

7 A No.

8 Q When you discussed with the water
9 quality division gathering the documents
10 responsive to this request, did you discuss these
11 specific forms that are requested in Request
12 Number 7?

13 A I did not -- I discussed this request with
14 the custodian of the water quality records.

15 Q And who is that?

16 A Jerry Perrin.

17 Q Jerry Perrin. Is he the individual you
18 spoke with with regards to Request Number --
19 Requests Number 1 -- I'm sorry. Let me say that
20 differently. 2, 3, 4, 5, 6, and 7?

21 A Yes.

22 Q Okay. Is it your understanding that he
23 has provided all documents responsive to this
24 request with the exception of the time limitation
25 you've given me for each of those requests?

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1 Q Are these -- is there a specific -- are all
2 these documents identified in Request Number 8,
3 are they located in a facility file as well?

4 A If we have these documents, they are
5 within the water quality division boxes 26 through
6 31, and box 43.

7 Q Just give me one second. Under Request
8 Number 8, I'm going to hand you what's been
9 marked as Exhibit 13 to your deposition. Number
10 -- I mean, Request Number 8, Letter A, requests
11 that all documents and data related to sludge
12 management for any facility located in the Illinois
13 River Watershed from 1980 to the present, all
14 Form 1, general information, application for
15 permit to discharge, and/or treat industrial
16 wastewater or sludge, that those be provided. Do
17 you see that?

18 (Exhibit-13 marked for identification)

19 A Yes.

20 Q And what I've provided you is a document
21 which is titled Application for Permit to Discharge
22 and/or Treat or Dispose of Industrial Wastewater
23 or Sludge, Form 1, General Information. Do you
24 see that?

25 A Yes.

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1 A Yes.

2 Q Let's move on to Request Number 8 which
3 states produce all documents and data related to
4 sludge management for any facility located in the
5 Illinois River Watershed from 1980 to the present
6 including but not limited to the following, and
7 we'll just go through those one by one. What
8 individual did you speak with -- let's see. What
9 division did you speak with to obtain records
10 responsive to Request Number 8?

11 A Water quality division.

12 Q Okay. And what individual there in the
13 water quality division assisted you in gathering
14 documents that were responsive to Request
15 Number 8?

16 A Jerry Perrin.

17 Q So just -- I'll go back to the specifics in
18 just a second. Looking generally at the forms
19 requested, there's five forms that have been
20 identified, and then there's also a correspondence,
21 communication, file notes, memoranda, studies
22 and reports that have also been requested with
23 regards to the sludge management for any facility
24 in the Illinois River Watershed. Do you see that?

25 A Yes.

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1 Q Have all Form 1's for any facility located
2 in the Illinois River Watershed from 1980 to the
3 present been provided?

4 A Yes.

5 Q Has any facility been excluded?

6 A No.

7 Q Is there any time limitation with regards
8 to Form 1 for any particular -- that have -- that
9 might -- is that the time limitation we've
10 discussed with regards to the previous requests
11 for production of documents? Does that apply to
12 Form A -- Form 1 in Request Number 8?

13 A Yes. We have provided the documents as
14 far back as we have them. If it goes -- if we have
15 them to 1980, we have provided them.

16 Q Okay. And I think your counsel has
17 actually led on to something that I was going to
18 ask you about. Has there been any other
19 application that covers this that may be in a filing
20 -- let me rephrase that. That's a really poor
21 question. Form 1, at the top of Form 1, it says,
22 "Revised June 2002." Are you aware of other
23 forms that have been utilized as an application for
24 permit to discharge and/or treated or dispose of
25 industrial wastewater or sludge?

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1 A I'm not aware of them, but I don't know if
2 they exist or not.

3 Q If they do exist, would they have been
4 provided upstairs?

5 A Yes.

6 Q In the facility files?

7 A Yes.

8 Q Okay. In the water quality division?

9 A Yes.

10 Q Okay. I'm going to hand you what I'm
11 marking as Exhibit 14 to your deposition. This
12 document is entitled Application for Permit to
13 Discharge Industrial Wastewater, Form 2C,
14 Wastewater Discharge Information, Existing
15 Manufacturing, Commercial and Mining
16 Operations. Did I read that correctly?

17 (Exhibit-14 marked for identification)

18 A Yes.

19 Q Okay. And in this document, it indicates
20 it was revised in September of 2005. To your
21 knowledge, have all applications for permit to
22 discharge industrial wastewater, whether it's
23 specifically this 2C or any other form previously
24 used by the ODEQ, have those been provided for
25 any facility located in the Illinois River Watershed

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1 A Yes.

2 Q Okay. And have all Form 2D's or any
3 other form previously used for application for
4 permit to discharge industrial wastewater for any
5 facility located in the Illinois River Watershed
6 from 1980 to the present to the extent that they
7 exist been provided to us for review?

8 A Yes.

9 Q Okay. And when I say to the extent they
10 exist, we're only talking about time limitation.
11 We're not necessarily talking about being excluded
12 for any other purpose than the fact that it just
13 merely doesn't exist?

14 A That's correct.

15 Q Is there any other reason besides the fact
16 that it may not have come over from the
17 Department of Health if not to exist in the files
18 upstairs?

19 A No.

20 Q I'm going to hand you what I'm marking
21 as Exhibit 16 to your deposition. This document
22 is entitled Application for Permit to Land Apply
23 Industrial Wastewater and/or Sludge, Form 2L,
24 Land Application of Industrial Wastewater and/or
25 Sludge. Do you see that?

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1 from 1980 to the present to the extent they exist?

2 A Yes.

3 Q That's a really long question. And as
4 you've indicated, these would also be identified in
5 -- or located in water quality division boxes 26
6 through 31, and box 43?

7 A Yes.

8 Q Has any Form 2C or any other form
9 utilized for the application for permit to discharge
10 industrial wastewater been excluded for any
11 facility in the Illinois River Watershed to your
12 knowledge?

13 A No.

14 Q Let me hand you what I'm marking as
15 Exhibit 15 to your deposition. This document is
16 entitled Application for Permit to Discharge
17 Industrial Wastewater, Form 2D, Wastewater
18 Discharge Information, New Manufacturing,
19 Commercial and Mining Operations. Did I read
20 that correctly?

21 (Exhibit-15 marked for identification)

22 A Yes.

23 Q And this is the document -- is this the
24 same form -- is this form responsive to Request
25 Number 8, Letter Number C?

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1 (Exhibit-16 marked for identification)

2 A Yes.

3 Q Okay. And is this the same form that's
4 been identified in Request Number 8, Letter D?

5 A Yes.

6 Q Okay. And have all applications for
7 permit to land apply industrial wastewater and/or
8 sludge whether identified as 2L, Form 2L, or
9 previous forms utilized for that purpose been
10 provided upstairs?

11 A Yes.

12 Q And other than the time exclusion we
13 previously discussed, is there any other reason
14 why an application for permit to land apply
15 industrial wastewater and/or sludge for any
16 facility in the Illinois River Watershed from the
17 1980 to the present has not been produced?

18 A No.

19 Q I'm going to hand you what I'm marking
20 as Exhibit 17 to your deposition. This document
21 is entitled Application for Permit to Discharge
22 and/or Treat Industrial Wastewater or Sludge,
23 Form 616-2SI, Surface Impoundments and Septic
24 Tanks. Did I read that correctly?

25 (Exhibit-17 marked for identification)

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1 A Yes.
 2 Q Have all applications for permit to
 3 discharge and/or treat industrial wastewater or
 4 sludge for surface impoundments and septic tanks
 5 been provided upstairs?
 6 A Yes.
 7 Q Okay. Are there any -- any of these forms
 8 that may be maintained that we've discussed with
 9 regards to Request Number 6, Form 1, Form 2C,
 10 Form 2D, Form 2L, Form 616-2SI that might be
 11 contained in any of the locations at Jay,
 12 Tahlequah, or Roland?
 13 A Not to my knowledge.
 14 Q Have any applications for permit to
 15 discharge and/or treat industrial wastewater or
 16 sludge for service impoundments and septic tanks
 17 been excluded from the production upstairs with
 18 the exception for the reason of they may not exist
 19 because of the time issue that you've discussed
 20 previously?
 21 A No. They have not been excluded.
 22 Q Okay. Now, looking at Letter F under
 23 Request Number 8, it requests correspondence,
 24 communications, file notes, memoranda, studies
 25 and reports. Let's talk about correspondence, and

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1 communications related to sludge management for
 2 any facility located in the Illinois River Watershed
 3 might be located?
 4 A Not to my knowledge.
 5 Q Okay. File notes, where would those be
 6 located?
 7 A In the same boxes, 26 through 31 and 43.
 8 Q Are you aware of any other division or
 9 any of the other documents identified above that
 10 would have file notes related to sludge
 11 management for any facility located in the Illinois
 12 River Watershed?
 13 A No.
 14 Q Memoranda, where would those be
 15 located?
 16 A The same boxes.
 17 Q Okay. And any other division that would
 18 have memoranda related to sludge management for
 19 any facility in the Illinois River Watershed?
 20 A No.
 21 Q Studies and reports, where would those --
 22 related to sludge management for any facility in
 23 the Illinois River Watershed, where would those be
 24 located?
 25 A The same boxes.

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1 communication, file notes, and memoranda. Have
 2 all documents and data related to sludge
 3 management, specifically correspondence,
 4 communication, file notes, and memoranda, been
 5 produced --
 6 A Yes.
 7 Q -- for any facility located in the Illinois
 8 River Watershed?
 9 A Yes.
 10 Q To your knowledge, has anything been
 11 excluded from production that is correspondence,
 12 communication, file notes, or memoranda?
 13 A No.
 14 Q Okay. And were those -- would that --
 15 where would those correspondence -- where would
 16 the correspondence be located in the documents
 17 upstairs?
 18 A They will be in the water quality division
 19 within the sludge program files boxes 26 through
 20 31, and box 43.
 21 Q And communications, would they be
 22 located in the same place?
 23 A Yes.
 24 Q Would there be any other location within
 25 ODEQ's files that correspondence or

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1 Q Do you know of any other division that
 2 might have information related to studies or
 3 reports on sludge management for any facility
 4 located in the Illinois River Watershed?
 5 A No.
 6 Q So just as a cleanup, all -- to your
 7 knowledge, all correspondence, communications,
 8 files notes, memoranda, studies and reports
 9 related to sludge management for any facility
 10 located in the Illinois River Watershed would be
 11 located in the water quality division boxes 26
 12 through 31, and box 43?
 13 A Yes.
 14 Q Let's look at Request Number 9. "Produce
 15 all documents and data related to construction
 16 permitting for any facility, municipality, county or
 17 other entity or individual in the Illinois River
 18 Watershed from 1980 to the present including, but
 19 not limited to," and then following that are one,
 20 two, three, four, five specifically identified form
 21 numbers, and then sanitary sewer engineering
 22 report forms, and then again, correspondence,
 23 communication, file notes, memoranda, studies
 24 and reports, is that correct?
 25 A Yes

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1 Q Have all documents that ODEQ has in its
2 possession responsive to Request Number 9 been
3 provided?
4 A Yes.
5 Q Let's specifically talk about each one. I
6 guess to simplify matters, are these documents all
7 located in one particular file?
8 A Yes.
9 Q Okay. What would that file be?
10 A They will be in boxes 1 through 43, file 1.
11 Q So they, again, are they identified by
12 facility?
13 A They are -- boxes 1 through 43 are broke
14 down by program.
15 Q By program. Okay. So can you tell me
16 the programs that are encompassed in boxes 1
17 through 43?
18 A I don't have that with me.
19 Q Okay. When you say boxes 1 through 43,
20 are you referring to the water quality division
21 boxes?
22 A Yes. I'm sorry.
23 Q Let me hand you what I'm marking as
24 Exhibit 18 to your deposition. This document is
25 entitled Application for Permit to Construct Water

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1 Q File 1. And what is file 1?
2 A Permit applications.
3 Q Permit applications. Okay. And is that
4 identified by source or is it a general file that
5 contains all permit applications?
6 A It's identified by program.
7 Q By program?
8 A Public water supply, industrial water,
9 sludge.
10 Q Okay. So there will be an industrial
11 water supply permit file folder?
12 A Right.
13 Q And within that file folder, is it broke out
14 by facility or is it just they're lumped together? I
15 guess I'm trying to understand the context of the
16 file.
17 A Sure. I'm sorry. Each facility has its
18 own file.
19 Q Okay. So the city of Tahlequah would
20 have its own file which would be -- you've
21 identified as file 1?
22 A Right.
23 Q Which would be for permit and would be
24 identified as municipality, municipal water
25 supply?

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1 Pollution Control or Public Water Supply Facilities
2 and/or Potable Water. Did I read that correctly?
3 (Exhibit-18 marked for identification)
4 A Yes.
5 Q And then in the right lower right-hand
6 corner, it says DEQ Form Number 583-B. Do you
7 see that?
8 A Yes.
9 Q Okay. At this time, is this the current
10 form to your knowledge that ODEQ is using for
11 applications for permit to construct water
12 pollution control?
13 A Yes.
14 Q Are you aware of any other forms that
15 have been utilized for this purpose?
16 A No.
17 Q If there are other forms that were used by
18 the ODEQ, would they be contained in water
19 quality division boxes 1 through 43?
20 A Yes.
21 Q Okay. And if you were to look through
22 boxes 1 through 43 for this particular application
23 for permit to construct water pollution control, in
24 what type of -- in what file would I find that?
25 A File 1.

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1 A That's correct.
2 Q Okay. And any other type of applications
3 for permitting that the city of Tahlequah needs
4 would be contained within that file?
5 A No. The city of Tahlequah might have an
6 industrial file, a public water supply file, and
7 their records are in boxes broken down by
8 program.
9 Q Okay.
10 A So Tahlequah might be in --
11 Q Several programs?
12 A -- several programs, yes.
13 Q Okay. Excellent. Thank you.
14 A You're welcome.
15 Q Do you know which programs would have
16 a folder for, say, the city of Tahlequah?
17 A I can't -- no.
18 Q Okay. To your knowledge, have all
19 applications for permit to construct, this
20 document that we're looking at, application for
21 permit to construct water pollution control or
22 public water supply facilities and/or supply
23 potable water been provided for any facility,
24 municipality, county, or other entity or individual
25 within the Illinois Watershed from 1980 to the

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1 present?
 2 A Yes.
 3 Q Is there any limitation as to -- time
 4 limitation as to what has been produced that's
 5 responsive to Request Number 9 specifically
 6 looking at Exhibit 18?
 7 A No.
 8 Q I'm going to hand you what I'm marking
 9 as Exhibit 19 to your deposition. Exhibit 19 is
 10 entitled Application for Municipal Sludge Land
 11 Application Permit. Did I read that correctly?
 12 (Exhibit-19 marked for identification)
 13 A Yes.
 14 Q At the bottom it says DEQ Form Number
 15 850 SMP, May 2005. Do you see that?
 16 A Yes.
 17 Q Okay. To your knowledge is this the form
 18 that DEQ is currently using for applications for
 19 municipal sludge land application permits?
 20 A Yes.
 21 Q Are you familiar -- or are you aware of
 22 any other prior forms that have been utilized for
 23 this purpose?
 24 A I'm not aware of any.
 25 Q If there were other forms that would be

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1 (Exhibit-20 marked for identification)
 2 A Yes.
 3 Q Okay. To your knowledge, is this the
 4 form that the DEQ is currently using for
 5 applications for municipal wastewater land
 6 application permits?
 7 A Yes.
 8 Q Are you aware of any other forms that
 9 have been used by the DEQ for this purpose?
 10 A No.
 11 Q If there were other forms utilized by the
 12 DEQ, would they be obtained in the boxes?
 13 A Yes.
 14 Q Is there any applications for any
 15 municipality, county, facility, or other entity or
 16 individual in the Illinois River Watershed that has
 17 been excluded from the production upstairs?
 18 A No.
 19 Q I'm handing you what I'm marking as
 20 Exhibit 21 to your deposition. This Exhibit 21 is
 21 entitled Application for Industrial Sludge Land
 22 Application Permit. Do you see that?
 23 (Exhibit-21 marked for identification)
 24 A Yes.
 25 Q Okay. And it's identified as DEQ Form

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1 utilized, would they be contained in the boxes
 2 you've identified that were responsive to this
 3 request?
 4 A Yes.
 5 Q And do the forms that -- this particular
 6 form follow the same format that you just
 7 described to me, meaning that they be broke out
 8 by division and by facility in file number 1?
 9 A Yes.
 10 Q Okay. Like I said, it's not meant to be a
 11 marathon if you want to take a break at some
 12 point. It might be lunchtime.
 13 MR. NANCE: It's five till noon, so just --
 14 when you come to a reasonable stopping point, we
 15 can break for lunch.
 16 Q (BY MS. LONGWELL) Let's finish this
 17 request number and we'll move forward. I mean,
 18 we'll move for lunch. I'm handing you Exhibit -- I
 19 believe I marked it as -- did I mark it?
 20 MR. NANCE: 20.
 21 Q (BY MS. LONGWELL) 20. Okay. This
 22 Exhibit 20 is entitled Application for Municipal
 23 Wastewater Land Application Permit, and is in the
 24 lower right-hand corner identified as DEQ Form
 25 Number 852 NIWP, May 2005. Do you see that?

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1 Number 853 ISMP, and it says September '99. Do
 2 you know whether this is the current application
 3 used by the DEQ for industrial sludge land
 4 application permits?
 5 A To my knowledge it is.
 6 Q Okay. Are you aware of any other forms
 7 that have been utilized for this purpose?
 8 A No.
 9 Q Okay. And have all applications for
 10 industrial sludge land application permits,
 11 whether in this form or another form, for any
 12 facility, municipality, county, individual or other
 13 entity in the Illinois River Watershed been
 14 produced?
 15 A Yes.
 16 Q And none have been excluded --
 17 A No.
 18 Q -- to your knowledge?
 19 A No.
 20 Q Handing you what I'm marking as Exhibit
 21 21 to your deposition. 22? Oh. 22 to your
 22 deposition. Exhibit 22 is entitled Application for
 23 Industrial Wastewater Land Application Permit.
 24 It's DEQ Form Number 854 IWP, September 1999.
 25 To your knowledge, is this the current form

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1 utilized for application of -- for industrial
2 wastewater land application permits?
3 (Exhibit-22 marked for identification)

4 A Yes.

5 Q Okay. Are you aware of any other form
6 utilized by the ODEQ for this purpose?

7 A No.

8 Q And have all applications for industrial
9 wastewater land application permits, whether
10 using this form or any previous form by the ODEQ,
11 been provided?

12 A Yes.

13 Q And have any been excluded?

14 A No.

15 Q Handing you what's been marked as
16 Exhibit 23 to your deposition. Okay. Exhibit 23
17 is entitled Engineering Report Form for Sanitary
18 Sewer Extensions, Lift Stations, and Force Mains.
19 Do you see that?

20 (Exhibit-23 marked for identification)

21 A Yes.

22 Q To your knowledge, is this the current
23 form being utilized by the ODEQ for engineering
24 report forms for sewer -- sanitation sewer
25 extensions, lift stations, and force mains?

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1 and reports for any construction permitting for
2 any facility, municipality, county, or other entity
3 or individual in the Illinois River Watershed,
4 where would those be located?

5 A I'm sorry. Can you repeat that?

6 Q Sure. It was a bad question. And, in
7 fact, let me break it down because it's just a little
8 bit easier to communicate that way. Where would
9 the correspondence for any construction
10 permitting related to any facility, municipality,
11 county, entity or individual within the Illinois
12 River Watershed from 1980 to the present be
13 located?

14 A In the water quality division boxes.

15 Q Okay. In which specific file within the
16 water quality division boxes would they be
17 located?

18 A I have what says file 4, but I'm unsure
19 about that.

20 Q Okay. Do you think that there may be
21 multiple places that correspond that's related to
22 construction permitting for the list of various
23 entities, municipalities, and the like for the
24 Illinois River Watershed would be located?

25 A No, I believe that is correct, file 4, for

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1 A Yes.

2 Q Okay. Is this -- are these forms, this
3 engineering report form, are any of these forms
4 maintained at the local offices you identified, Jay,
5 Tahlequah, or Roland?

6 A Not to my knowledge.

7 Q Okay. So all of these forms would be
8 located here at the main office for ODEQ?

9 A Yes.

10 Q Okay. Are you familiar with any other
11 engineering report forms?

12 A No.

13 Q Have all engineering report forms for any
14 sanitary sewer extension, lift stations, or force
15 mains, whether using this form, ODEQ form, or
16 any previous ODEQ forms, been provided for any
17 municipality, county, facility, entity or individual
18 within the Illinois River Watershed from 1980 to
19 the present been provided?

20 A Yes.

21 Q To your knowledge has anything been
22 excluded?

23 A No.

24 Q Looking at 9G, all correspondence
25 communications, file notes, memoranda, studies

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1 construction permitting. I believe that's correct.

2 Q Okay. Is there any other division that
3 would have information relating to construction
4 permitting?

5 A No.

6 Q For communications, would those also be
7 located in file four?

8 A Yes.

9 Q Would they be located -- would
10 communications regarding construction permitting
11 and the Illinois River Watershed be located with
12 any other division under Oklahoma -- I mean,
13 under the ODEQ?

14 A No.

15 Q File notes regarding construction
16 permitting in the Illinois River, where would those
17 be located?

18 A In file 4.

19 Q All right. Would any other division have
20 file notes regarding construction permitting for
21 any facility, municipality, county, or other entity
22 or individual in the Illinois River Watershed?

23 A No.

24 Q Studies and reports relating to
25 construction permitting in the Illinois River

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1 Watershed, where would those be located?

2 A In file 4.

3 Q Is there any other -- to your knowledge,
4 is there any other division that would have
5 information regarding studies and reports for
6 construction permitting for any facility,
7 municipality, county, or other entity or individual
8 in the Illinois River Watershed?

9 A No.

10 Q Has any correspondence, communication,
11 file notes, memoranda, studies or reports, been
12 excluded from production? Let me ask that
13 question -- strike that. Has any correspondence,
14 communication, file notes, memoranda, studies
15 and reports for construction permitting for any
16 facility, municipality, county, or other entity or
17 individual within the Illinois River Watershed
18 been excluded from production to the defendants
19 today?

20 A No.

21 Q Let's take a break. Any more questions?
22 MR. BOND: You referred to the water
23 quality division boxes. Can you just give us the
24 box numbers?

25 THE WITNESS: Can I give you the box

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1 starting with A, where upstairs any Forms
2 605-002A's would be located?

3 A Yes. Those will be in the ECLS division
4 boxes, box 9.

5 Q Okay. And then Form -- I mean, in Letter
6 Number B, Form 605-002B?

7 A The same box.

8 Q Letter C, Form 605-006?

9 A Same box.

10 Q Letter D, Form 640-572?

11 A Same box.

12 Q Okay. Letter E, discharge monitoring
13 reports?

14 A Same. Same box.

15 Q NPDES reporting requirements?

16 A Same box.

17 Q Letter G, EPA Region 6 discharge
18 monitoring report forms?

19 A I don't believe we had any of these, but if
20 we have them, they will be in that box.

21 Q Okay. Letter H, violation or action
22 instituted by ODEQ for any violation related to the
23 aforementioned storm water, industrial, or
24 construction forms and permits?

25 A Those will be in our legal files.

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1 numbers?

2 MR. BOND: Yeah.

3 THE WITNESS: For which --

4 MR. BOND: Following up on her
5 questions to Request Number 9, Subsection G.

6 THE WITNESS: Okay. For A, on 9A, it
7 would be within water quality division boxes 1
8 through 43, file 1.

9 MR. BOND: Got it.

10 THE WITNESS: B through G would be
11 water quality boxes 1 through 21, file 4.

12 MS. LONGWELL: Let's take a break for
13 lunch.

14 (Short break at 12:07 p.m., resumed at
15 1:12 p.m.)

16 Q (BY MS. LONGWELL) Okay. We left off
17 at -- we had finished Request Number 9, and so
18 we'll move on to Request Number 10. In Request
19 Number 10 we request that all documents and data
20 related to storm water discharge for any facility,
21 municipality, county, or other entity or individual
22 in the Illinois River Watershed from 1980 to the
23 present be produced, and including but not
24 limited to a list of specific forms, and then of
25 course a couple of general areas. Can you tell me

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1 Q Is there any other files that they would
2 be located -- that information might be located in?

3 A They might be in the ECLS box 9.

4 Q Okay. And the first one, it says any
5 notice of violations. Did you previously say that
6 there might be notice of violations for storm water
7 discharges that would be located in the water
8 quality division boxes?

9 A Yes, that's correct. That is correct.

10 Q Do you know which boxes those might be
11 located in in the water quality division boxes?

12 A I do not.

13 Q Okay. On the list that your -- that the
14 state's counsel gave to us, there was a file plan
15 for the industrial municipal facilities, and on page
16 2, it says cheat sheet for PWS files.

17 A Uh-huh.

18 Q And it says file 2 enforcement, and then
19 clip 3 says all enforcement orders. Is that
20 specifically where -- in a specific file where those
21 notice of violations would be located?

22 A Yes.

23 Q Okay. And that would include storm
24 water discharge violations?

25 A Yes.

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1 Q And does that help your recollection of
2 where in the water quality division these file 2's
3 would be located?

4 A Specifically in the PWS files, but I don't
5 have that right now.

6 Q Okay.

7 A And I apologize.

8 Q That's all right. I just thought I might --
9 if we backtracked through it we might get your
10 memory going there, and then Letter I,
11 correspondence, communication, file notes,
12 memoranda, studies and reports related to storm
13 water discharge for any facility, municipality,
14 county, or other entity or individual in the Illinois
15 River Watershed, and where would those be
16 located?

17 A Those would be in ECLS box 9.

18 Q Again, would any of those documents be
19 located in any of the water quality division boxes?

20 A Possibly, yes.

21 Q Let me backtrack for just a second and go
22 to a general question. Your counsel had
23 mentioned something after we broke for lunch.
24 How did you go about pulling these files? Were
25 they pulled by county or were they pulled by the

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1 Q And what were those counties? Do you
2 recall?

3 A Adair, Cherokee, Sequoyah, and
4 Delaware.

5 Q Okay. And so once they did that, then
6 they pulled -- by divisions they pulled -- and when
7 you say divisions, you're talking about whether
8 it's like sludge, or if it's water treatment, or
9 wastewater? Is that what you're referring to?

10 A No. The agency has six divisions, and so
11 each division -- seven divisions. It can include
12 legal. So each division has its own records

13 Q Right.

14 A Although the records are in the custody
15 of the central records group. So when I say
16 division, I mean that overview of the divisions
17 within the agency, and then the programs falls
18 underneath the division for water quality.

19 Q Okay. So I'm sorry. I used the wrong
20 term. So you have a division and then under water
21 quality division, you've got programs?

22 A Programs, yes.

23 Q And when we refer to programs, that's
24 when we're referring to --

25 A PWS, industrial, municipal, sludge.

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1 Illinois River Watershed?

2 A All of the records?

3 Q Yes.

4 A All of the records were identified -- we
5 identified what counties were within the Illinois
6 Watershed. Then each division pulled records
7 according to those counties.

8 Q Okay.

9 A But they're not in the boxes by county.

10 Q Okay.

11 A In other words, they're not filed by
12 county.

13 Q How are they filed in the boxes?

14 A Depending -- it depends on the division.

15 Q Okay. Let's talk about the water quality
16 division.

17 A Water quality is filed by division, then
18 program, and then facility number, and the file
19 and clip.

20 Q Okay. And so you're saying the initial
21 process was you would have gone to the water
22 quality division, let's just use them as an
23 example, and identify those counties that were
24 within the Illinois River Watershed?

25 A Correct.

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1 Q Okay. And PWS is public water supply?

2 A Yes.

3 Q Okay. Do any of the other divisions have
4 programs underneath them?

5 A They do have programs. They're not
6 necessarily filed that way in the boxes that you'll
7 be looking at.

8 Q Okay. So when you did this document
9 review for, let's use, for example, the land
10 services division?

11 A Land protection.

12 Q Land protection division. After having
13 pulled the counties, what process did they use to
14 then decide which files were up there for us to
15 review -- or you said like you -- let me go back.
16 You said under the water quality division they
17 went back and they broke it down then by
18 programs?

19 A Right.

20 Q And then by facility, and so is there a
21 similar process that was used with the land
22 protection services?

23 A The land protection division responded to
24 one of the requests for production specifically.

25 Q Which one do you recall is that?

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1 A I think Number 33.
 2 Q Okay.
 3 A And 30 -- well, 29 through 33.
 4 Q Okay.
 5 A There was another one also, a request for
 6 Sequoyah Fuels.
 7 MS. BRONSON: 25.
 8 MR. HAMMONS: Sorry, Ms. Bronson.
 9 Could you say that again?
 10 MS. BRONSON: 25.
 11 THE COURT REPORTER: Say it -- what
 12 is it?
 13 Q (BY MS. LONGWELL) 25 I think is what
 14 she said. Yeah, Sequoyah. Number 25 says data
 15 related to Sequoyah Fuels Facility.
 16 A Yes.
 17 Q So there were specific things that they
 18 were pulling unlike -- so their production was
 19 much more limited than the water quality
 20 division?
 21 A That's correct.
 22 Q Would that be accurate?
 23 A Yes.
 24 Q Okay. We may have to go back into detail
 25 more when we get into this, but at least I kind of

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1 Q Are you aware of whether any other forms
 2 have been utilized for this purpose?
 3 A No, I'm not aware.
 4 Q Okay. Have you -- has ODEQ produced
 5 all Form 605-002A's or any other forms utilized
 6 with the notice of intent for storm water
 7 discharges associated with construction activity
 8 on sites of one to five acres and sites of five or
 9 more acres related to any storm water discharge
 10 for any facility, municipality, county, or other
 11 entity or individual in the Illinois River Watershed
 12 from 1980 to the present?
 13 A Yes.
 14 Q Has there been any time periods in which
 15 the ODEQ could not produce these forms from
 16 1980 to the present?
 17 A I don't know.
 18 Q Okay. Are you aware of any gaps in time
 19 or times -- I mean, issues with regards to the time
 20 frame for production of this particular document?
 21 A Just the fact that this agency became an
 22 agency in 1994.
 23 Q Okay.
 24 A Prior to that -- and I don't know when the
 25 agency started this program. So other than that, I

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1 have an understanding of what you did initially.
 2 Going back to Request Number 10, let me hand
 3 you what I'm marking as Exhibit 24 to your
 4 deposition. This Exhibit 24 is titled Notice of
 5 Intent for Storm Water Discharges Associated with
 6 Construction Activity on Sites of One to Five Acres
 7 and Sites of Five or More Acres Under the OPDES
 8 General Permit OKR10. Did I read that correctly?
 9 (Exhibit-24 marked for identification)
 10 A Yes.
 11 Q Okay. This form has two pages at least
 12 based on what I've provided to us, is that correct?
 13 A Yes.
 14 Q Okay. It also says in the top left-hand
 15 corner DEQ Form 605-002A, September 13, 2002,
 16 in the left-hand corner at the top. Did I state
 17 that correctly?
 18 A Yes.
 19 Q Okay. And are you aware that this is the
 20 current form used by the ODEQ for notice of
 21 intent of storm water discharges based on the title
 22 --
 23 A Yes.
 24 Q -- of this document?
 25 A Yes.

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1 don't know.
 2 Q But as long as this program has been
 3 held under ODEQ, you've produced all records
 4 related to this -- to notices of intent for storm
 5 water discharges?
 6 A Yes.
 7 Q Okay. I'm sorry. I'm handing you what
 8 I'm marking as Exhibit 25 to your deposition.
 9 Exhibit 25 is entitled Oklahoma Department of
 10 Environmental Quality Notice of Intent for Storm
 11 Water Discharges Associated with Industrial
 12 Activities Under the OPDES Multi-sector
 13 Industrial General Permit OKR05. Did I read that
 14 correctly?
 15 (Exhibit-25 marked for identification)
 16 A Yes.
 17 Q And in the top left-hand corner of this
 18 form, it says OPDES Form 605-002B, is that
 19 correct?
 20 A Yes.
 21 Q Are you aware of whether this is the
 22 current form being utilized by the DEQ for notices
 23 of intent for industrial activities?
 24 A I believe that it is.
 25 Q Okay. Are you familiar with any other

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1 forms that have been used for this purpose?

2 A No.

3 Q Have all notice of intent for storm water
4 discharges associated with industrial activities for
5 any facility, municipality, county, or other entity
6 or individual in the Illinois River Watershed for
7 the period of time the ODEQ has been regulating
8 such activities been produced?

9 A Yes.

10 Q Okay. To your knowledge has anything
11 been excluded or any facility been excluded or
12 municipality or county?

13 A No.

14 Q Other than the general limitations you've
15 described previously?

16 A Right.

17 Q That is the four counties you identified?

18 A That's correct.

19 Q Okay. I'm going to hand you what I've
20 marked as Exhibit 26 to your deposition. Okay.
21 This Exhibit 26 has been -- is entitled Oklahoma
22 Department of Environmental Quality Annual
23 Comprehensive Site Compliance Evaluation Report
24 for Industrial Facilities, and in the left-hand
25 corner it says DEQ Form 605-006. Did I read that

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1 Q Are you aware of any documents or any
2 compliance site -- sorry, any annual
3 comprehensive site compliance evaluation reports
4 for industrial facilities that have not been
5 provided to us for review?

6 A No.

7 Q I'm going to hand you what I'm marking
8 as Exhibit 27 to your deposition. Does the form
9 that I provided you, Exhibit 27, does it have -- is
10 it two-sided?

11 (Exhibit-27 marked for identification)

12 A Yes.

13 Q Okay. And the title for this document is
14 Notice of Termination for Storm Water Discharges
15 Associated with Industrial or Construction
16 Activities Under an OPDES General Permit, and
17 it's DEQ Form 640-572 dated September 13, 2002,
18 is that correct?

19 A Yes.

20 Q Okay. This is the form identified under
21 Letter D of Request for Production Number 10, is
22 that correct?

23 A Yes.

24 Q Okay. And to your knowledge is the form
25 currently being utilized by the DEQ as a notice of

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1 correctly?

2 (Exhibit-26 marked for identification)

3 A Yes.

4 Q And the document I've given to you
5 contains four pages, is that correct?

6 A Yes.

7 Q Okay. To your knowledge is this the form
8 DEQ currently uses for annual comprehensive site
9 compliance evaluation reports for industrial
10 facilities?

11 A Yes.

12 Q Are you aware of any other forms that
13 have been utilized for this purpose by the
14 Oklahoma Department of Environmental Quality?

15 A No.

16 Q Have all forms, this form, and any
17 previous forms used by the Department of
18 Environmental Quality for annual comprehensive
19 site compliance evaluation reports for industrial
20 facilities been provided for any facility,
21 municipality, county, or other entity or individual
22 in the Illinois River Watershed from DEQ's -- the
23 time DEQ started regulating such activity to the
24 present?

25 A Yes.

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1 termination for storm water discharges for
2 industrial or construction activity under an
3 OPDES general permit?

4 A Yes.

5 Q Are you aware of any other forms used by
6 the Oklahoma Department of Environmental
7 Quality?

8 A No.

9 Q Okay. Have all notices of termination for
10 storm water discharges associated with industrial
11 or construction activity under an OPDES general
12 permit either using this form or any form
13 previously used by the Department of
14 Environmental Quality been produced for any
15 facility, municipality, county, or other entity or
16 individual in the Illinois River Watershed from the
17 time the DEQ began regulating such activity?

18 A Yes.

19 Q Has any documents been -- have any of
20 these notices of termination been excluded --

21 A No.

22 Q -- to your knowledge?

23 A No.

24 Q I believe we're on Exhibit 28, is that
25 correct?

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1 A Yes.

2 Q I'm going to hand you what I'm marking

3 as Exhibit 28 to your deposition. The title of this

4 document says National Pollutant Discharge

5 Elimination System, and in parentheses, NPDES,

6 Discharge Monitoring Report, and in parentheses,

7 DMR. Do you see that?

8 (Exhibit-28 marked for identification)

9 A Yes.

10 Q Okay. Is this the discharge monitoring

11 report currently utilized by the Oklahoma

12 Department of Environmental Quality for reporting

13 under the NPDES permits?

14 A Yes.

15 Q Are you aware of whether there's been

16 any other form utilized for this purpose by the

17 ODEQ?

18 A No.

19 Q Okay. Have all discharge monitoring

20 reports for any storm water discharge from any

21 facility, municipality, county, or other entity or

22 individual within the Illinois River Watershed

23 been produced for the period of time that ODEQ

24 has been regulating to the present --

25 A Yes.

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1 A Yes, it has.

2 Q Okay. Looking at Letter G, you indicated

3 that you don't think that you have any of the EPA

4 Region 6 discharge monitoring report forms, that

5 you're -- that you didn't find any -- specifically

6 identify it as the EPA?

7 A That's correct.

8 Q Okay. But you did say that you have

9 produced those that the ODEQ has identified as

10 using the discharge monitoring reports that we

11 talked about as Exhibit 28, correct?

12 A Yes.

13 Q Okay. Moving onto H, has the ODEQ

14 provided all notices of violations or action

15 instituted by the ODEQ for any violation related to

16 storm -- the aforementioned storm water,

17 industrial, or construction forms and permits to

18 your knowledge?

19 A Have we provided them?

20 Q Yes.

21 A Yes, we have.

22 Q And you've indicated to me that you

23 believe that those would be located in the legal

24 files?

25 A Yes.

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1 Q -- this activity? Okay. Has any

2 documents -- have any of these monitoring reports

3 been excluded for any facility, municipality,

4 county, or other entity or individual to your

5 knowledge?

6 A No.

7 Q Now, we're down to the -- hold on. I'm

8 handing you what I'm marking as Exhibit 29 to

9 your deposition. The document I've handed you as

10 Exhibit 29 is entitled NPDES Reporting

11 Requirements Handbook dated August 1, 1997. Do

12 you see that?

13 (Exhibit-29 marked for identification)

14 A Yes.

15 Q Okay. And according to what I have,

16 there are 33 pages to that document. Is the

17 document I handed to you 33 pages long?

18 A Yes.

19 Q Okay. Do you know whether this

20 document is provided to any facility, municipality,

21 county or other entity that has an NPDES permit?

22 A I don't know.

23 Q Okay. I'm going to skip over that one.

24 Do you know whether that handbook has been

25 provided in response to the discovery request?

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1 Q Potentially the ECLS files, correct?

2 A Correct.

3 Q Any specific box under either the legal or

4 the ECLS boxes that you think those might be

5 located in?

6 A Box 9 for ECLS. For legal, I believe it's

7 boxes 6 and 7.

8 Q Okay. And then you said there -- we had

9 talked about that they may be also contained in

10 the water quality division --

11 A Yes.

12 Q -- in the file, in the enforcement file 2,

13 under clip 3?

14 A That's correct.

15 Q And those -- you couldn't recall where

16 those files -- where the file 2's would be located

17 for any facilities, municipality, county, or other

18 entity or individual, any specific box?

19 A No.

20 Q Okay. But they are up -- they are there?

21 A Yes. Yes.

22 Q To your knowledge, has any violations or

23 actions which have been instituted by the ODEQ

24 for any violations for storm water, industrial, or

25 construction forms and permits that we just

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1 discussed or that I showed you in Request Number
2 10, have any of those been excluded from
3 production to your knowledge?

4 A No.

5 Q Okay. Moving to Request Number 10I,
6 correspondence, communication, file notes,
7 memoranda, studies and reports. You indicated
8 previously that you believe that any
9 correspondence, communication, file notes,
10 memoranda, studies and reports related to storm
11 water discharge for any facility, municipality,
12 county, or other entity or individual in the Illinois
13 River Watershed would be located in ECLS box 9?

14 A That's correct

15 Q And did you say that you thought some of
16 them may also be contained in the water quality
17 division files for the facility or municipality?

18 A That is possible.

19 Q Okay. To your knowledge has any
20 correspondence, or communication, files, notes,
21 memoranda, studies or reports been excluded from
22 your production related to storm water discharge
23 for any facility, municipality, county or other
24 entity or individual in the Illinois River
25 Watershed?

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1 Q To your knowledge, has any of those been
2 -- has any landowner affidavits -- notification
3 affidavits been excluded?

4 A No.

5 Q Where would these landowner notification
6 forms be located in the boxes that are being
7 produced?

8 A In the water quality division boxes 26
9 through 31, 34 through 42.

10 Q Okay. To your knowledge, is this form,
11 Exhibit 30, the current form being used by DEQ
12 for landowner notification affidavits?

13 A Yes.

14 Q Okay. And any other form previously
15 used by DEQ for landowner notification affidavits,
16 have those been provided?

17 A Yes.

18 Q Handing you what's been marked as
19 Exhibit 31 to your deposition. The top of Exhibit
20 31 is entitled Affidavit of No Discharge, hyphen,
21 DEQ Form 530E, in parentheses 9-98, close paren,
22 is that correct?

(Exhibit-31 marked for identification)

24 A Yes.

25 Q Okay. And, in fact, it says instructional

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1 A No.

2 Q Okay. Let's move on to the Request for
3 Production Number 11. Okay. Request Number 11
4 requests all documents and data related to water
5 -- wastewater treatment both municipal and
6 industrial including but not limited to landowner
7 notification forms and affidavits of no discharge
8 for any facility, municipality, county, or other
9 entity or individual in the Illinois River Watershed
10 from 1980 to the present, correct?

11 A Correct.

12 Q Let me hand you what I'm marking as
13 Exhibit I believe 31 or are we on 30?

14 THE COURT REPORTER: 30.

15 THE WITNESS: 30.

16 Q (BY MS. LONGWELL) 30. The document
17 I've provided to you as Exhibit 30 is titled DEQ
18 Landowner Notification Affidavit. Where in the
19 boxes -- first of all, has the ODEQ produced all
20 landowner notification forms for any facility,
21 municipality, county, entity or individual in
22 the Illinois River Watershed since they began
23 regulating such activity?

(Exhibit-30 marked for identification)

25 A Yes.

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1 guide for the first page, and the document I've
2 given to you is two-sided, correct?

3 A Yes.

4 Q And on the second side, it's actually
5 affidavit of no discharge, is that correct?

6 A Yes.

7 Q Okay. To your knowledge, is this the
8 current form being utilized by the DEQ for
9 affidavits of no discharge for any facility,
10 municipality, county or entity or individual in the
11 Illinois River Watershed?

12 A Yes.

13 Q And have all -- to your knowledge, have
14 all affidavits of no discharge for any facility,
15 municipality, county, entity or individual in the
16 Illinois River Watershed been provided to us for
17 our review since DEQ started regulating such
18 activity?

19 A Yes.

20 Q To your knowledge, has any affidavits of
21 no discharge been excluded from production?

22 A No.

23 Q Let me just go back for just a second. On
24 Request Number 9, 10, and 11 -- well, actually let
25 me start with that. Let me start with Request

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1 Number 9. You indicated that those were all in
2 water quality division boxes, is that correct?

3 A Yes

4 Q So was Jerry Perrin the individual you
5 worked with in the water quality division to obtain
6 these documents?

7 A Yes.

8 Q Did you work with anyone else to obtain
9 these documents in the water quality division?

10 A Not -- no.

11 Q Okay. Looking at Request Number 10,
12 you've indicated that those documents are located
13 -- could be located in several spots. You've got
14 ECLS. You have possibly water quality division,
15 and then also legal. Who did you work with in
16 ECLS to obtain these documents and prepare them
17 for review?

18 A Ellen Akin.

19 Q Okay. Who in legal did you work with to
20 obtain the documents that were responsive to this
21 request, Request Number 10?

22 A Sandra McClain.

23 Q Who did you work with in the water
24 quality division to obtain documents that were
25 responsive to Request Number 10?

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1 Number 10 -- I mean, 12. Sorry.

2 A The same.

3 Q Letter C?

4 A Same.

5 Q Letter D?

6 A The same.

7 Q Just to make this clear, is there any --
8 other than Letter K, is there any other location for
9 -- of E through J other than water quality division
10 boxes 34 through 42, file 1 or file 3, if larger?

11 A No.

12 Q So those A through J are all located in
13 the same box set?

14 A That's correct.

15 Q Okay. And then as for Letter K under
16 Request for Production Number 12, where would
17 those items be located?

18 A In the same boxes.

19 Q Okay. Is there any other location for
20 documents or data that's related to the industrial
21 wastewater general permits in the Illinois River
22 Watershed from 1980 to the present other than
23 these forms and correspondence, communications,
24 file notes, memoranda, studies and reports that
25 we've identified here?

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1 A Jerry Perrin.

2 Q Looking at Request Number 11, you've
3 indicated those are in the water quality division
4 boxes. Who did you work with to obtain these
5 documents?

6 A Jerry Perrin.

7 Q Let's move on to Request Number 12.
8 Request Number 12 says, "Produce all documents
9 and data related to industrial wastewater general
10 permits in the Illinois River from 1980 to the
11 present," and it says, "including but not limited to
12 the following," and in there is identified one, two,
13 three, four, five, six, seven, eight, nine, ten,
14 eleven -- or sorry, ten forms, and then also
15 correspondence communication, file notes,
16 memoranda, studies and reports, is that correct?

17 A Yes.

18 Q Let's go through each letter, A through K,
19 and could you tell me where all documents that
20 have been identified under A would be located,
21 Letter A of Request Number 12?

22 A Those will be in water quality division
23 boxes 34 through 42, either file 1, or if they're
24 very large, file 3.

25 Q Okay. And for Letter B under Request

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1 A No.

2 Q Okay. I'm providing you what I've marked
3 as Exhibit 32 to your deposition. The title of
4 Exhibit 32 is Oklahoma Department of
5 Environmental Quality Application for General
6 Permit OKG38 to Discharge Wastewater from Filter
7 Backwash Operations At Potable Water Treatment
8 Plants Under the Oklahoma Pollutant Discharge
9 Elimination System, in parentheses, OPDES. Did I
10 state that correctly?

11 (Exhibit-32 marked for identification)

12 A Yes.

13 Q Okay. And in the document that I have
14 provided to you, the first three pages of the
15 document are instructions to DEQ, Form 2MW, is
16 that correct?

17 A Yes.

18 Q Okay. And then the following I believe
19 three pages, they're not front and back on the last
20 three pages or the last few pages, are they, the
21 forms?

22 A I'm sorry.

23 Q The form that you have, the document
24 that you have, is it front and back or just the
25 front?

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1 A Just single-sided.
 2 Q Okay. So the first three pages -- or the
 3 last three pages of Exhibit 32 is an actual
 4 application for authorization under OPDES general
 5 permit number OKG38 to discharge wastewater
 6 from filter backwash operations at potable water
 7 treatment plants, correct?
 8 A Yes.
 9 Q To your knowledge is this the form
 10 currently being used by DEQ for authorization
 11 under OPDES general permit number OKG38 to
 12 discharge wastewater?
 13 A Yes.
 14 Q Are you aware of any other forms that
 15 have been used for this purpose by ODEQ?
 16 A No.
 17 Q Have you provided -- has ODEQ provided
 18 all Form 2MW's and any other forms used for
 19 application for authorization for general permit
 20 OKG38 for industrial wastewater general permits
 21 in the Illinois River since it began regulating such
 22 activity?
 23 A Yes.
 24 Q To your knowledge, have any Form 2MW's
 25 or any other applications used for this purpose

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1 to your knowledge is this the form that DEQ is
 2 currently using for application for authorization
 3 for a general permit for surface coal strip mines?
 4 A Yes.
 5 Q Okay. Do you know if there's any other
 6 form that has been utilized by the DEQ for this
 7 purpose?
 8 A No.
 9 Q And to your knowledge have all
 10 applications for authorization under general
 11 permit number OKG04 for surface coal strip
 12 mines, whether it be this form, 605-G04, or any
 13 other prior forms used by the DEQ, been provided
 14 for any industrial wastewater general permits in
 15 the Illinois River Watershed since the ODEQ began
 16 regulating such activity?
 17 A Yes.
 18 Q Handing you what I'm marking as Exhibit
 19 34 to your deposition. Exhibit 34 is entitled
 20 Application for Authorization Under General
 21 Permit Number OKG11, Concrete Batch Plants.
 22 The form is 605-G11. Did I state that correctly?
 23 (Exhibit-34 marked for identification)
 24 A Yes.
 25 Q In this instance Exhibit 34 is five pages

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1 been excluded from production?
 2 A No.
 3 Q I'm handing you what I'm marking as
 4 Exhibit 33 to your deposition. Exhibit 33 is
 5 entitled Surface Coal Mine Strip -- Surface Coal
 6 Strip Mine. Actually, strike that. Exhibit 32 is
 7 identified as Application for Authorization Under
 8 General Permit Number OKG04?
 9 A 33.
 10 Q 33. Sorry. I apologize. 33 -- Exhibit 33
 11 is identified as Application for Authorization
 12 Under General Permit Number OKG04, Surface
 13 Coal Strip Mines, Form 605-G04, is that correct?
 14 (Exhibit-33 marked for identification)
 15 A Yes.
 16 Q And the document that I provided to you
 17 may contain more pages than it should, but it says
 18 it's four pages long, but I think there's a blank
 19 page in there in the copy, and I also think at the
 20 end it says page 2 of 4 and that's blank. So the
 21 document I provided to you is actually six pages
 22 long, but the permit -- the application appears to
 23 be four pages long, is that accurate?
 24 A Yes.
 25 Q Okay. Are you aware of any -- are you --

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1 long, is that correct?
 2 A Yes.
 3 Q To your knowledge, is this the current
 4 form being utilized by the Department of
 5 Environmental Quality for an application for
 6 authorization under general permit number of
 7 OKG11 for concrete batch plants?
 8 A Yes.
 9 Q Okay. To your knowledge has any other
 10 form been utilized for that purpose by the DEQ?
 11 A No.
 12 Q Okay. Have you provided all applications
 13 for authorization under general permit number
 14 OKG11 concrete batch plans for industrial
 15 wastewater general permits in the Illinois River
 16 Watershed from DEQ since it began regulating
 17 such activity?
 18 A Yes.
 19 Q To your knowledge, have any applications
 20 for concrete batch plants been excluded from
 21 production?
 22 A No.
 23 Q Handing you what I'm marking as Exhibit
 24 35 to your deposition. Exhibit 35 is entitled
 25 Application for Authorization Under General

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1 Permit Number OKG75, Vehicle Wash Facilities,
 2 Form 605-G75, is that correct?
 3 (Exhibit-35 marked for identification)
 4 A Yes.
 5 Q And Exhibit 35 is four pages long, is that
 6 correct?
 7 A Yes.
 8 Q And to your knowledge, is the current
 9 form used by the Department of Environmental
 10 Quality for application for authorization under
 11 general permit number OKG75 for vehicle wash
 12 facilities?
 13 A Yes.
 14 Q Have all applications for authorization
 15 under general permit number OKG75 vehicle wash
 16 facilities been provided?
 17 A Yes.
 18 Q Whether utilizing this form or any other
 19 previous form used by the ODEQ?
 20 A Yes.
 21 Q To your knowledge, has any applications
 22 under the general permit number OKG75 for
 23 vehicle wash facilities been excluded for any
 24 industrial wastewater permit in the Illinois River
 25 Watershed?

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1 A No.
 2 Q Have all applications for a general permit
 3 for cleanup of petroleum underground storage
 4 tank systems been produced in response to this
 5 request?
 6 A Yes.
 7 Q To your knowledge, have any been
 8 excluded?
 9 A No.
 10 Q Let's just be clear. To your knowledge,
 11 have any that would fall into the Illinois River
 12 Watershed been excluded?
 13 A No.
 14 Q Okay. Handing you what I'm marking as
 15 Exhibit 37 to your deposition. This document is
 16 entitled Application for Permit of a Categorical or
 17 Significant Industrial User in a Non-Pretreatment
 18 Municipality to Discharge Industrial Waste to the
 19 Publicly Owned Treatment Works, or in
 20 parentheses POTW, Form DEQ 605-008. Did I read
 21 that correctly?
 22 (Exhibit-37 marked for identification)
 23 A Yes.
 24 Q This application is 15 pages long, is that
 25 correct?

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1 A No.
 2 Q Handing you what I'm marking as Exhibit
 3 36 to your deposition. Exhibit 36 is entitled
 4 Application for Authorization Under OPDES
 5 General Permit Number OKG830000, Cleanup of
 6 Petroleum Underground Storage Tank Systems,
 7 Form G83, is that correct?
 8 (Exhibit-36 marked for identification)
 9 A Yes.
 10 Q Okay. I think once again I provided you a
 11 document that has extra pages. The document I
 12 provided to you is five pages long, is that correct?
 13 A No. There's a blank page.
 14 Q Oh. Okay. According to the first page,
 15 it's page one of -- there's four pages in this
 16 application. How many pages is the exhibit that I
 17 provided to you in total?
 18 A Five pages with the blank page.
 19 Q Okay. Okay. That's what I want to make
 20 sure. All right. Is this the current form used by
 21 ODEQ for an OPDES general permit for cleanup of
 22 petroleum underground storage tank systems?
 23 A Yes.
 24 Q Okay. To your knowledge, has any other
 25 form been used by the ODEQ for this purpose?

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1 A Yes.
 2 Q To your knowledge, is this the current
 3 application for the permit identified in the title of
 4 this Exhibit 37? Is this the current form used by
 5 DEQ?
 6 A Yes.
 7 Q To your knowledge, has any other form
 8 been utilized by DEQ for the purpose stated in the
 9 title of Exhibit 37?
 10 A No.
 11 Q Have all applications for permits of a
 12 categorical or significant industrial user in a
 13 non-pretreatment municipality to discharge
 14 industrial waste to the publicly owned treatment
 15 works been produced for the Illinois River
 16 Watershed since ODEQ began regulating such
 17 activity?
 18 A Yes.
 19 Q To your knowledge, have any of these
 20 permits been excluded?
 21 A No.
 22 Q I'm going to hand you what I'm marking
 23 as Exhibit 38 to your deposition. Exhibit 38 is
 24 entitled Application for Authorization Under
 25 General Permit Number OKGC3T, Total Retention

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1 Surface Impoundment Systems Containing Class
2 Three Industrial Wastewater, Form 615-GC3, is
3 that correct?

4 (Exhibit-38 marked for identification)

5 A Yes.

6 Q Okay. This application is four pages
7 long, is that correct?

8 A Yes.

9 Q Okay. And is this the current application
10 used for the purpose stated in the title of Exhibit
11 38?

12 A Yes.

13 Q Do you know if any other forms have been
14 used by the DEQ for the application for
15 authorization under a general permit for the
16 purpose stated in the title of Exhibit 38?

17 A No.

18 Q Has the ODEQ produced all applications
19 for authorization under general permit number
20 OKGC3T for total retention surface impoundment
21 systems containing class three industrial
22 wastewater in the Illinois River Watershed from
23 the time that it's been regulating such activity?

24 A Yes.

25 Q Has it excluded any applications for the

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1 of industrial wastewater at a rock, sand, and
2 gravel quarry surface impoundment for the Illinois
3 River watershed from -- since the time it began
4 regulating such activity?

5 A Yes.

6 Q Do you know when it began regulating
7 such activity?

8 A I do not.

9 Q To your knowledge, has any of the
10 applications for the permit which is stated in the
11 title of Exhibit 39 been excluded from production?

12 A No.

13 Q I'm going to hand you what I'm marking
14 as Exhibit 40 to your deposition. Exhibit 40 is
15 entitled Application for Authorization Under
16 General Permit Number OKG11MT, Mobile Concrete
17 Batch Plants, Form 616-G11MT, is that correct?
(Exhibit-40 marked for identification)

18 A Yes.

19 Q And this application is three pages long,
20 correct?

21 A Yes.

22 Q Okay. Is this the current form utilized by
23 the ODEQ for the application for authorization by
24 the general permit from mobile concrete batch
25

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1 purpose stated in the title of Exhibit 38 to your
2 knowledge?

3 A No.

4 Q I write the number in and it just leaves
5 my brain. Handing you what's been marked as
6 Exhibit 39 to your deposition. Exhibit 39 is titled
7 OPDES Application for General Permit OKG950000
8 to Discharge and/or Dispose of Industrial
9 Wastewater at Rock, Sand, and Gravel Quarries
10 Surface Impoundments, Form 2QSI, is that
11 correct?

12 (Exhibit-39 marked for identification)

13 A Yes.

14 Q And this application is six pages long, is
15 that correct?

16 A Yes.

17 Q Is this the current form used by ODEQ for
18 the purpose stated in the title of Exhibit 39?

19 A Yes.

20 Q To your knowledge, have there been any
21 other forms used by ODEQ for the purpose stated
22 in Exhibit 39?

23 A No.

24 Q Has the ODEQ provided all applications
25 for general permits for discharge and/or dispose

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1 plants?

2 A Yes

3 Q To your knowledge has the ODEQ utilized
4 any other form?

5 A No.

6 Q Has the ODEQ produced all forms -- all
7 applications for authorization for general permits
8 for mobile concrete batch plants for the Illinois
9 River Watershed for the time period it has been
10 regulating such activity?

11 A Yes.

12 Q Has it excluded any applications for
13 authorization for a general permit from mobile
14 concrete batch plants for the Illinois River to your
15 knowledge?

16 A No.

17 Q I'm going to hand you what's been marked
18 as Exhibit 41 to your deposition. Exhibit 41 is
19 entitled Application for Authorization Under
20 NPDES General Permit Number OKG27, Wastewater
21 Discharge for Hydrostatic Test Projects Under DEQ
22 Jurisdiction, Form G27, is that correct?

(Exhibit-41 marked for identification)

23 A Yes.

24 Q And it is -- this application is three
25

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1 pages long, is that correct?

2 A Yes.

3 Q Okay. To your knowledge, is this the
4 current form used by the DEQ for an application
5 for authorization under an NPDES general permit
6 for the purpose stated in the title of Exhibit 41?

7 A Yes.

8 Q To your knowledge, has the ODEQ ever
9 utilized any other form for the purpose stated in
10 the title of Exhibit 41?

11 A No.

12 Q Has the ODEQ produced all applications
13 for authorization under NPDES general permit
14 number 0KG27, wastewater discharge for
15 hydrostatic test projects under DEQ jurisdiction
16 either under this form, G27, or any previous form
17 for the Illinois River Watershed for the time period
18 the DEQ has been regulating such activity?

19 A I forgot the question.

20 Q I think I did, too.

21 A I'm so sorry.

22 Q Let me ask you this way.

23 MR. BOND: Have you ever used a
24 different form?

25 Q (BY MS. LONGWELL) I've already asked

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1 would have correspondence, communication, file
2 notes, memoranda, studies and reports related to
3 industrial wastewater in the Illinois River
4 Watershed?

5 A No.

6 Q Has the DEQ produced all
7 correspondence, communications, file notes,
8 memoranda, studies and reports for industrial
9 wastewater general permits in the Illinois River
10 Watershed from the time it began regulating such
11 activity in response to this request?

12 A Yes.

13 Q Has it excluded, to your knowledge, any
14 correspondence, communications, file notes,
15 memoranda, studies and reports responsive to this
16 request?

17 A No.

18 Q Would you like to take a break?

19 A Yes.

20 Q Okay.

21 (Short break at 2:12 p.m., resumed at
22 2:31 p.m.)

23 Q (BY MS. LONGWELL) We left off -- before
24 the break we finished up Request Number 12, I
25 believe. So let's move on to Request Number 13.

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1 that question. I want it to look clean. Has -- let
2 me restate the question. Let me strike that
3 question and give it to you this way. Has the --

4 A I'm sorry.

5 Q That's okay. I'm right there with you.
6 Has the DEQ produced all applications for
7 authorization under the NPDES general permit for
8 wastewater discharges for hydrostatic test
9 projects under DEQ jurisdiction whether under the
10 form you have in front of you as Exhibit 41 or any
11 previously used form in the Illinois River
12 Watershed since the time it began regulating such
13 activity?

14 A Yes.

15 Q Let's move on to the easy questions now.
16 Let's look at Letter K under Request for
17 Production Number 12. You've indicated that the
18 correspondence, communication, file notes,
19 memoranda, studies and reports for industrial
20 wastewater general permits in the Illinois River
21 from 1980 to the present would be located in the
22 water quality division boxes upstairs, 34 through
23 42, file 1, and maybe file 3, if large?

24 A That's correct.

25 Q Okay. Is there any other divisions that

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1 Request Number 13 says, "Produce all documents
2 and data related to municipal wastewater permits
3 in the Illinois River Watershed from 1980 to the
4 present, including but not limited to general
5 wastewater discharge permit, municipal/domestic
6 lagoons, and general wastewater discharge permit
7 fact sheet for municipal and domestic lagoons,
8 and then correspondence, communications, file
9 notes, memoranda, studies and reports," is that
10 correct?

11 A Yes.

12 Q Okay. Looking at the specific items
13 identified, where would general wastewater
14 discharge permits be located upstairs in the boxes
15 that have been produced?

16 A They will be in the water quality division
17 boxes 26 through 31, and 34 through 42, file 1 or
18 depending on the size, file 3.

19 Q Okay. And Letter B under Request
20 Number 13, general wastewater discharge permit
21 fact sheet, has that been produced?

22 A Yes.

23 Q And where would that be located?

24 A That would be the same location.

25 Q So is there a general wastewater

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1 discharge permit fact sheet provided to each of the
2 municipal or -- a municipality or facility that has
3 a permit for municipal or domestic lagoons?

4 A I don't know.

5 Q Okay. I guess my question is is each of
6 these -- we've talked about the structure of the
7 boxes from the water quality division, and you've
8 identified multiple boxes, and I'm wondering if
9 you believe that there's been more than one
10 general wastewater discharge permit fact sheet
11 that's been produced by the ODEQ in response to
12 this request?

13 A I don't know.

14 Q Okay. Item Number C, correspondence,
15 communication, file notes, memoranda, studies
16 and reports. Where would those be located?

17 A Those would be in the same.

18 Q Okay. Were there any general wastewater
19 discharge permits for the municipalities that were
20 not provided?

21 A No.

22 Q Would any other division of the
23 Department of Environmental Quality have any
24 correspondence, communication, file notes,
25 memoranda, studies or reports associated with a

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1 discharge permit applications; Form 2M2, minor
2 discharge permit applications; Form 2MG58,
3 applications for authorization to be covered under
4 general permit OKG58 for municipal and domestic
5 discharge lagoons; Any violations or notices of
6 violations of the above permits; DMR's; and
7 correspondence, communication, file notes,
8 memoranda, studies and reports," is that correct?

9 A Yes.

10 Q Okay. Let's look at -- once again, let's
11 look at the individual items identified under
12 Request Number 14. Can you tell me where all
13 Form 2M1, the major discharge permit
14 applications for any municipal wastewater
15 discharge permit granted in the Illinois River
16 Watershed would be located?

17 A Those will be in the water quality division
18 boxes 26 through 31, and 34 through 42, file 1, or
19 depending on the size, file 3.

20 Q Okay. And with regards to Letter B, Form
21 2M2, where would those be located?

22 A The same.

23 Q The same. And then Form 2MG58, where
24 would those be located?

25 A The same.

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1 general wastewater discharge permit?

2 A No.

3 Q If an investigation was conducted by
4 ODEQ into municipality regarding a violation of
5 some sort, would that be all contained in the
6 water quality division files or would they be
7 located in any other file?

8 A Those could be located in the legal files.

9 Q So then any correspondence that might be
10 related to a notice of violation or something along
11 those lines might be located in another location?

12 A Yes, that is true.

13 Q But any correspondence, communications,
14 files, memoranda, studies and reports, whether it
15 be regarding a notice of violation, an
16 investigation, or the permit itself would be located
17 has been produced by ODEQ?

18 A Yes.

19 Q Okay. I know this is going to get you
20 excited. Let's move on to Request Number 14.
21 Request Number 14 says, "Produce all documents
22 and data related to municipal wastewater
23 discharge permits in the Illinois River Watershed
24 from 1980 to the present, including but not
25 limited to the following, Form 2M1, for major

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1 Q Okay. What about violations or notices of
2 violations of the above permits?

3 A Those could be in those boxes. They will
4 be in the legal records.

5 Q Okay. DMR's?

6 A Water quality 26 through 31 and 34
7 through -- I'm sorry, 34 through 42.

8 Q And then, again, correspondence,
9 communication, file notes, memoranda, studies
10 and reports?

11 A That would be the same.

12 Q And, again, if there's some
13 correspondence or communication or file notes or
14 memoranda regarding a violation or a notice of
15 violation, it could also be located in the legal
16 files?

17 A Yes.

18 Q I'm going to hand you what I've marked as
19 Exhibit 42 or what has been marked as Exhibit 42
20 to your deposition. This Exhibit 42 is titled
21 Application for Permit to Discharge
22 Municipal/Domestic Wastewater, Form 2M1,
23 hyphen, Major Discharge, is that correct?

(Exhibit-42 marked for identification)

25 A Yes.

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1 Q Okay. And the document I provided to
2 you is multiple pages, but the first part of the
3 document itself, the first ten or so pages is
4 actually -- well, minus the cover sheet, the first
5 nine pages are actually instruction sheets, is that
6 correct?

7 A Yes.

8 Q Okay. And then the remaining pages in
9 Exhibit 42 is the actual application for permit, is
10 that correct?

11 A Yes.

12 Q To your knowledge, is this the current
13 form used by the ODEQ to permit discharge of
14 municipal and domestic wastewater under an
15 OPDES permit?

16 A Yes.

17 Q Okay. Do you know whether ODEQ has
18 ever utilized another form for this application?

19 A I don't know.

20 Q Okay. Has the ODEQ produced all
21 applications for permit to discharge municipal or
22 domestic wastewater under an OPDES permit
23 regardless of whether it's 2M1 or some other
24 previous form for municipal wastewater discharge
25 in the Illinois River Watershed for the time period

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1 form been utilized by the ODEQ for this purpose?

2 A No.

3 Q Has the ODEQ produced every application
4 for permit to discharge municipal domestic
5 wastewater under Oklahoma Pollutant Discharge
6 Elimination System whether it be with this form or
7 another form for minor discharge in response to
8 this request?

9 A Yes.

10 Q Has it excluded any applications, permit
11 applications for minor discharges?

12 A No.

13 Q Handing you what's been marked as
14 Exhibit 44. Exhibit 44 is entitled Application for
15 Authorization to be covered under General Permit
16 OKG58, and then there's an ellipsis, for
17 Municipal/Domestic Discharge Lagoon,
18 Instructions for Form 2MG58, is that correct?

19 (Exhibit-44 marked for identification)

20 A Yes.

21 Q Okay. And the first four pages, other
22 than the cover sheet, the first four pages of
23 Exhibit 44 is instructions followed by the actual
24 application, is that correct?

25 A Yes.

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1 that the ODEQ has been regulating such activity?

2 A Yes.

3 Q Do you know when the ODEQ began
4 regulating such activity?

5 A I do not.

6 Q Okay. Has any applications for a major
7 discharge permit for municipal wastewater
8 treatment facility in the Illinois River Watershed
9 not been produced?

10 A No.

11 Q Handing you what's been marked as
12 Exhibit 43 to your deposition. Exhibit 43 is titled
13 Application for Permit to Discharge
14 Municipal/Domestic Wastewater, Form 2M2, Minor
15 Discharge, and, again, this form has
16 approximately five pages of instruction followed by
17 the application itself, is that correct?

18 (Exhibit-43 marked for identification)

19 A Yes.

20 Q Okay. And is this the current form used
21 by the ODEQ for applications for a permit to
22 discharge municipal or domestic wastewater under
23 an OPDES permit?

24 A Yes.

25 Q Okay. To your knowledge, has any other

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1 Q Okay. Is this the current application
2 utilized by the Oklahoma Department of
3 Environmental Quality for authorization to be
4 covered under general permit OKG58 for municipal
5 and domestic discharge lagoons under the OPED --
6 under an OPDES permit?

7 A Yes.

8 Q Okay. To your knowledge, has any other
9 form been utilized for this purpose?

10 A No.

11 Q Has ODEQ produced every application for
12 authorization for the purpose stated in Exhibit 44
13 for the Illinois River Watershed from the time it
14 began regulating such activity?

15 A Yes.

16 Q To your knowledge, has any application
17 been excluded?

18 A No.

19 Q Looking at Letter D under Request for
20 Production Number 14 which asks for all
21 documents and data related to violations or
22 notices of violations of permits for municipal
23 wastewater discharge in the Illinois River
24 Watershed, have those been produced by the
25 ODEQ?

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1 A Yes.
 2 Q Has any violation or notice of violation
 3 been excluded?
 4 A No.
 5 Q And DMR stands for discharge monitoring
 6 report, correct?
 7 A Yes.
 8 Q So under Letter E, Request Number 14, it
 9 refers to the discharge monitoring reports for
 10 municipal wastewater discharge permits issued in
 11 the Illinois River Watershed by ODEQ, correct?
 12 A Yes.
 13 Q Okay. Have those been produced for the
 14 Illinois River Watershed since ODEQ has been
 15 regulating such activity?
 16 A Yes.
 17 Q Have any been excluded?
 18 A No.
 19 Q Letter F of Request Number 14,
 20 correspondence, communication, file notes,
 21 memoranda, studies and reports, you've indicated
 22 that you believe those are located in water quality
 23 division boxes 26 through 31, 34 through 42,
 24 either in file 1 or possibly in file 3 based on the
 25 size for all municipal wastewater discharge

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1 Q Okay. Request Number 15 says, "Produce
 2 all documents and data associated with or relating
 3 to the investigation, promulgation or development
 4 of any total maximum daily loads for any impaired
 5 body waters within the Illinois River Watershed,"
 6 is that correct?
 7 A Yes.
 8 Q What divisions of the ODEQ did you
 9 discuss locating documents and data responsive to
 10 this request?
 11 A Water quality division.
 12 Q Okay. Is there any other division that
 13 would have within its realm documents or data
 14 that would be related to the investigation,
 15 promulgation or development of the TMDL for the
 16 Illinois River Watershed?
 17 A No.
 18 Q And your answer to that question, is that
 19 based on your knowledge of the records and the
 20 divisions of ODEQ, or is it based on something
 21 someone has told you?
 22 A That is based on my knowledge of the
 23 records.
 24 Q Okay. And what did you do, if anything,
 25 to verify that to be the case?

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1 permits issued by the ODEQ in the Illinois River
 2 Watershed, is that correct?
 3 A Yes.
 4 Q Okay. You've also indicated that you -- if
 5 the correspondence, or communication, file notes,
 6 memoranda, study or report is related to a
 7 violation or a notice of violation, there may be
 8 some of that located in the legal files?
 9 A That's correct.
 10 Q Okay. To your knowledge, has any
 11 correspondence been excluded that would be
 12 related to a municipal wastewater discharge
 13 permit in the Illinois River Watershed?
 14 A No.
 15 Q To your knowledge, have any
 16 communications regarding a municipal wastewater
 17 discharge permit in the Illinois River been
 18 excluded from production?
 19 A No.
 20 Q Okay. How about file notes?
 21 A No.
 22 Q Memoranda?
 23 A No.
 24 Q Studies or reports?
 25 A No.

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1 A I spoke with the record custodian, Jerry
 2 Perrin, for water quality records, and he spoke
 3 with I believe Ilda Hershey who had that
 4 information.
 5 Q And who is Ilda Hershey?
 6 A She works in the water quality division.
 7 Q Okay. And to your knowledge, have all
 8 documents and data associated with the
 9 investigation, promulgation, or development of any
 10 TMDL for the impaired water bodies within the
 11 Illinois River Watershed been produced?
 12 A Yes.
 13 Q To your knowledge, has any documents or
 14 data that's responsive to this request that have
 15 been identified as responsive to this request not
 16 been produced?
 17 A No.
 18 Q Where would this information, any data
 19 and documents related to the investigation,
 20 promulgation, or development of the TMDL, be
 21 located in the boxes produced upstairs?
 22 A They would be in the municipal files,
 23 boxes 26 through 31, file 1, and they would be in
 24 the 208 files, box 44.
 25 Q And is that water quality division boxes?

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1 A Yes.
 2 Q Okay.
 3 A I'm sorry.
 4 Q Let's move on to Request Number 16.
 5 Request Number 16 asks that the DEQ produce all
 6 documents and data related to sedimentation,
 7 erosion, deterioration or riparian lands or
 8 riparian zones in the Illinois River Watershed,
 9 including but not limited to, any investigations,
 10 projects, reports or studies undertaken or
 11 considered, whether or not completed, is that
 12 correct? Did I read that correctly?
 13 A Yes.
 14 Q Okay. And it's my understanding that
 15 you have not seen the completed discovery
 16 responses that the ODEQ provided to my client,
 17 Peterson Farms?
 18 A That is correct.
 19 Q Okay. So the only thing that you've seen
 20 are the requests that I propounded to the -- or
 21 that I issued to the Oklahoma Department of
 22 Environmental Quality, correct?
 23 A That's correct.
 24 Q In your search for these documents, did
 25 you identify any current studies which have been

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1 Watershed?
 2 A No.
 3 Q Only the water quality division?
 4 A Yes.
 5 Q Is that correct?
 6 A Yes.
 7 Q And how did you come to that conclusion?
 8 A I spoke with David Pruitt in water
 9 quality.
 10 Q Okay. So it was based on your discussion
 11 with him that you concluded there was no other
 12 division that would have this information?
 13 A That's correct.
 14 Q Did you undertake any independent effort
 15 to contact any of the other divisions with regards
 16 to this specific request?
 17 A No.
 18 Q To your knowledge, have all documents,
 19 data -- and data related to sedimentation, erosion,
 20 and deterioration of riparian lands or riparian
 21 zones in the Illinois River Watershed been
 22 produced by the ODEQ to the extent they exist?
 23 A Yes.
 24 Q Let's move to Request Number 17.
 25 Request Number 17 says, "Produce all documents

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1 undertaken by the ODEQ with regards to
 2 sedimentation, erosion, or deterioration of
 3 riparian lands?
 4 A We did not identify any after speaking
 5 with David Pruitt in water quality. We believe
 6 that if we have anything responsive to this
 7 request, it would be in our storm water files.
 8 Q Okay.
 9 A Otherwise, we don't believe it's our area
 10 of --
 11 Q So you believe another agent in another
 12 agency's area?
 13 A Yes.
 14 Q Okay. So all the documents you believe
 15 are -- that ODEQ believes are responsive to this
 16 request would be contained in the storm water
 17 files which are the water quality division storm
 18 water files, and what boxes are those?
 19 A The storm water boxes are box 9 if they
 20 exist.
 21 Q Right, if they exist. Is there any other
 22 division that would -- any other division of the
 23 ODEQ that may have data or documentation
 24 related to sediment, erosion, deterioration of
 25 riparian or riparian zones in the Illinois River

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1 and data related to any commercial nursery
 2 currently or formerly located within the Illinois
 3 River Watershed," is that correct?
 4 A Yes.
 5 Q What division of the ODEQ regulates
 6 commercial nursery activity?
 7 A None.
 8 Q None. And what individuals other than
 9 the ODEQ did you speak with to arrive at that
 10 conclusion?
 11 A I spoke with David Pruitt, Barbara
 12 Rausch. I think that's it.
 13 Q So has ODEQ produced any documents or
 14 data related to any commercial nursery currently
 15 or formally operating in the Illinois River
 16 Watershed?
 17 A No.
 18 Q And it's your understanding that's
 19 because no documents exist responsive to this
 20 request?
 21 A That's correct.
 22 Q Okay. Looking at Request for Production
 23 Number 18, all documents and data related to the
 24 flow or discharge of storm water and/or irrigation
 25 waters from a commercial nursery currently or

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1 formerly within the Illinois River Watershed. Did
2 you identify any documents responsive to this
3 request?

4 A No.

5 Q And once again, that's because it's your
6 understanding that this is not within ODEQ's
7 regulatory responsibilities?

8 A That's correct.

9 Q And that was based on your discussion
10 with Barbara Rausch and David Pruitt?

11 A Yes.

12 Q Did you check with any other division
13 other than water quality and legal -- and your
14 legal counsel for ODEQ to come to that
15 determination?

16 A No.

17 Q Let's look at Request for Production
18 Number 19. Request for Production 19 seeks
19 documents and data related to any complaints or
20 notices of violation filed with the ODEQ regarding
21 commercial nurseries, septic tanks, municipal
22 wastewater dischargers, gravel mining, dam
23 construction, solid or hazardous wastewater
24 hauling or disposables -- disposal, sorry, or
25 industrial wastewater discharges in the Illinois

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1 and that's been specifically identified in this
2 request within the Illinois River Watershed --

3 A Yes.

4 Q -- is that correct?

5 A Yes.

6 Q Where would those be located?

7 A The complaints?

8 Q The complaints and the notices, yes.

9 A Okay. The complaints will be in the ECLS
10 division boxes 1 through 8. The notices of
11 violation will be in legal division boxes 6 and 7.
12 The municipal wastewater dischargers will be in
13 water quality division boxes 26 through 31 and
14 34. That's all I have.

15 Q Okay. To your knowledge, has ODEQ
16 produced all complaints or notices of violation
17 that have been filed with it or made known to it
18 regarding any commercial nursery, septic tank,
19 municipal wastewater discharges, gravel mining,
20 dam construction, solid or hazardous waste
21 hauling or disposal, or industrial wastewater
22 dischargers in the Illinois River since 1980 to the
23 present to the extent they exist?

24 A Yes.

25 Q And when I say to the extent they exist,

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1 River Watershed from 1980 to the present. Did I
2 read that correctly?

3 A Yes.

4 Q Okay. Based on what you just previously
5 answered in the Request Number 17 and 18, I want
6 to ask you -- we're going to break this down by
7 each of these segments. It's my understanding
8 from what you previously told me, ODEQ does not
9 regulate commercial nurseries, is that correct?

10 A That is correct.

11 Q Do you have -- did you identify any
12 complaints or notices of violation that had been
13 filed, however, with the ODEQ regarding
14 commercial nurseries?

15 A We did not pull specifically. We pulled
16 all complaints.

17 Q Okay. So you didn't go through and
18 break it out by whether it was a septic tank
19 complaint or a commercial nursery?

20 A No.

21 Q You've just produced all complaints
22 associated with the Illinois River Watershed?

23 A That's correct.

24 Q Okay. And you also pulled notices of
25 violations for all activity regulated by the ODEQ,

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1 we're not talking about because the records have
2 been destroyed?

3 A That's correct.

4 Q Okay. To your knowledge, have any
5 documents that would be responsive to this
6 request, have they been destroyed by the ODEQ,
7 rather, I mean, under even maybe their own
8 destruction policy, document destruction policy?

9 A No.

10 Q To your knowledge, have any complaints
11 or notices of violation been excluded?

12 A No.

13 Q Let's look at Request for Production
14 Number 20. Request for Production Number 20
15 asks that the ODEQ produce all documents and
16 data related to any notices of violation of any
17 rules of the ODEQ environmental statutes of the
18 state of Oklahoma issued by the ODEQ or agent of
19 ODEQ on any point or non-point source discharger
20 within the Illinois River Watershed. Did I read
21 that correctly?

22 A Yes.

23 Q Did you identify any documents that were
24 responsive to Request Number 20?

25 A Any documents responsive to that request

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1 are in legal boxes 6 and 7.

2 Q Okay. And in Request Number 19, it
3 talks about notices of violation as well, and you
4 indicated that with regards to municipalities, that
5 there might be some located in the water quality
6 division boxes. Would that be applicable also to
7 Number 20, that if the point source is a
8 municipality, that it may be located in that file as
9 well?

10 A It could be the legal record. The legal
11 file is the official file.

12 Q Okay.

13 A Occasionally some of these documents
14 can be located in the water quality files.

15 Q Okay. And to your knowledge have all
16 documents and data related to any notices of
17 violation of the ODEQ or environmental statutes of
18 the state of Oklahoma regarding any point source
19 or non-point source within the Illinois River
20 Watershed been produced?

21 A Yes.

22 Q Do you know or are you aware of any
23 violations, notices of violations, that have -- for
24 any point or non-point source within the Illinois
25 River Watershed that have not been produced?

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1 search was conducted by a county for all
2 documents, whether NOV's or complaints, that
3 were within those counties within the time frame
4 specified by the request.

5 Q Okay. Did that -- I mean, you had
6 indicated the ODEQ basically came into existence
7 regulating the non -- point and non-point source
8 discharging in 1994. In your search did you pick
9 up any violations or complaints prior to 1994?

10 A Yes.

11 Q Okay. And those have been included?

12 A Yes.

13 Q To your knowledge, prior to 1994, have
14 any of those complaints or violations been
15 destroyed in either a document retention policy or
16 just inadvertently?

17 A I have no knowledge of that.

18 Q Okay.

19 A I don't know.

20 Q What divisions did you speak with about
21 obtaining the notices of violations or complaints
22 identified and requested in 19, 20 and -- Requests
23 for Production 19, 20, and 21?

24 A The legal division and the environmental
25 complaints and local services.

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1 A No.

2 Q Let's look at Request Number 21.
3 Request Number 21 asks that the ODEQ produce
4 all documents and data related to any notices of
5 violation of any rules of the EPA or any
6 environmental federal statute or regulation issued
7 by the EPA, ODEQ, or any agent of the ODEQ on
8 any point or non-point source of discharger within
9 the Illinois River Watershed. While the previous
10 request goes to rules of the DEQ and state
11 statutes, this one goes more to federal violations.
12 Did you identify any documents responsive to
13 Request Number 21?

14 A Not specifically, but notices of violations
15 will be in boxes 6 and 7 --

16 Q Okay.

17 A -- of the legal division. I'm sorry.

18 Q Okay. And when you were undertaking
19 your investigation and looking into those notices
20 of violation, the complaints that were identified
21 and requested in 19, 20, and 21, can you describe
22 for me the process you undertook in trying to
23 identify all the responsive documents?

24 A A search was conducted after we were
25 notified of the counties involved in the IRW. A

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1 Q Okay. To your knowledge, has the ODEQ
2 produced all notices of violations for any rule,
3 EPA rule, or environmental federal statute or
4 regulation issued by the EPA on any point and
5 non-point source discharge within its files?

6 A Yes. Any documents we have in our
7 control.

8 Q And did you -- are you aware of any
9 documents that, although responsive, have not --
10 were not produced?

11 A No.

12 Q Let's look at Request for Production
13 Number 22. Request for Production Number 22
14 states or requests all documents and data related
15 to the condition of any stream, rivers or
16 impoundment, and/or any impacts, solutions, or
17 recommendations for any stream, river or
18 impoundment in the Illinois River Watershed,
19 including but not limited to any investigations,
20 reports, studies, projects monitoring, evaluations
21 and assessments either undertaken or considered,
22 whether or not completed. Did I read that
23 correctly?

24 A Yes.

25 Q Can you tell me what you did to identify

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1 documents that were responsive to Request
2 Number 22?

3 A I met with the central records group, and
4 then met with water quality division personnel,
5 and requested -- read this request and asked them
6 to bring us all their documents.

7 Q Okay. And was there any discussion that
8 you had with regards to what types of documents
9 within the water quality division would fit into
10 this -- would be responsive to this request? How
11 did you specifically identify those that were
12 responsive?

13 A How did we identify them?

14 Q Yeah. I mean, did you say, "Okay. We
15 want to -- if there's anything regarding a stream,
16 or river, or impoundment in the Illinois River
17 Watershed, we need to pull that"? I mean, what
18 kind of discussion did you have with the water
19 quality division about how to -- for them in their
20 files to identify those that were responsive?

21 A Right. I'm not a technical person, so I
22 just read to them -- read them -- or gave them a
23 copy of this request and told them -- you know,
24 asked them for these specifically, but I didn't
25 necessarily have a discussion on each issue or

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1 A No, I can't.

2 Q Do you have their -- do you know what
3 their titles are?

4 A No.

5 Q Okay. Who identified those individuals
6 as being the people for you to contact?

7 A I guess I -- let me think. After speaking
8 with Jerry Perrin, meeting with Barbara Rausch, I
9 think we just decided that those were the people,
10 and David Pruitt is the go-to person on eight, so...

11 Q He's the go-to person for the water
12 quality division. Is that specifically related to
13 this case or is that just in general?

14 A In general.

15 Q Okay. So to your knowledge have all
16 documents regarding -- or data regarding the
17 condition of any stream, rivers or impoundments
18 or any impacts, solutions or recommendations for
19 any stream, river or impoundment in the Illinois
20 River Watershed been produced?

21 A Yes.

22 Q Do you know if -- did you ever review any
23 of those items that were provided by the water
24 quality division in response to this request?

25 A We reviewed them in order to inventory

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1 each item.

2 Q Okay. So you didn't make the
3 determination as to whether a document was
4 responsive to this request?

5 A That's correct.

6 Q There was a decision made by someone in
7 water quality division to your knowledge, that
8 they -- they're the ones that really undertook
9 deciding what documents were responsive to this
10 particular request? Would that be accurate?

11 A That is accurate.

12 Q And who were the individuals within the
13 water quality division that you talked to about
14 this particular request?

15 A David Pruitt, Mark Derichsweiler, Bob
16 Bednar.

17 Q Can you tell me what David Pruitt's
18 responsibilities are in the water quality division?

19 A I cannot give you his full scope of duties.
20 He's upper management, but...

21 Q What about Mark --

22 A Derichsweiler.

23 Q -- Derichsweiler? Yeah.

24 A No, I cannot.

25 Q Bob Bednar?

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1 the boxes that were produced.

2 Q Okay. Do you know if any actual data
3 with regards to sampling or anything along those
4 lines conducted in any stream, river or
5 impoundment were produced?

6 A I don't know.

7 Q Do you know based upon the documents
8 provided to you by the water quality division what
9 documents may have been excluded from this
10 production in response to this particular request?

11 A It's my understanding that no documents
12 were excluded.

13 Q Okay. And that's your understanding
14 from David Pruitt and Mike --

15 A Mark Derichsweiler.

16 Q Mark Derichsweiler and Bob Bednar?

17 A Yes.

18 Q Okay. Did they provide you -- did each of
19 those individuals provide you specific things
20 regarding this request or were they just kind of
21 working together and you talked to whichever one
22 was available?

23 A No. They each provided specific things.

24 Q What did David Pruitt provide specifically
25 with regards to this request?

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1 A To Number 22?
 2 Q Uh-huh.
 3 A I can't -- I can't speak to that. I don't
 4 know.
 5 Q Okay.
 6 A I'm sorry. I thought you meant in
 7 general.
 8 Q Well, and I guess I'm saying in general.
 9 Do you know -- do they have different -- are they
 10 responsible for different -- you know, there's the
 11 division of the water quality division, but, you
 12 know, there may be segments underneath that.
 13 Are these individuals responsible for maybe
 14 certain segments of that division?
 15 A Yes.
 16 Q Okay. Can you tell me -- do you know,
 17 you know, what those segments are and who's
 18 responsible for that particular segment?
 19 A I do not.
 20 Q Okay. Let's move on to Request Number
 21 23. I'm sorry. Where would these -- where would
 22 the documents that have been identified as
 23 responsive to Request Number 22 be located
 24 upstairs?
 25 A In water quality division boxes 62

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1 A No.
 2 Q Okay. So if I wanted to understand in
 3 greater detail the thought process that went into
 4 what documents were produced responsive to this
 5 request, I should talk to Jerry, not you?
 6 A Well, I'm not sure my notes are correct on
 7 this one, so I'm not sure that's accurate.
 8 Q Okay. Explain to me what you think
 9 might --
 10 A Well, I have -- my personal notes read
 11 water quality box 65, but I'm not sure that's
 12 accurate.
 13 Q Is your -- although your notes indicate
 14 that, is your memory of what might -- where this
 15 might be located different?
 16 A I don't know. I cannot -- I know we
 17 discussed it, Barbara and I, but I can't recall
 18 right now. I really can't.
 19 Q Can you say whether or not the
 20 documents -- all the documents ODEQ has in its
 21 possession that is responsive -- that are
 22 responsive to this request have been produced?
 23 A I can say that they have been produced if
 24 they are in our possession. I just -- I'm not clear
 25 on where or how or if we have any.

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1 through 66.
 2 Q Okay. Looking at Request Number 23,
 3 we've asked that ODEQ produce all documents and
 4 data related to and created by ODEQ pursuant to
 5 ODEQ's coordination obligations and
 6 responsibilities under Senate Bill 972 with the
 7 Secretary of the Environment including all
 8 documents and data received from or transmitted
 9 to the Oklahoma Secretary of Environment and his
 10 -- or his representatives or any other state agency
 11 or commission. How did you -- what process did
 12 you undertake to identify documents responsive to
 13 this request?
 14 A I spoke with Jerry Perrin and Barbara
 15 Rausch.
 16 Q Okay. Who provided you the information
 17 responsive to this request?
 18 A I believe Jerry did.
 19 Q Okay. So all the documentation -- and
 20 Jerry is with the water quality --
 21 A Water quality division, yes.
 22 Q And he -- do you know -- did he indicate
 23 who he may have worked with in the water quality
 24 division to obtain the documents responsive to
 25 this request?

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1 Q Okay. And I guess if you're not clear on
 2 that, is there another individual who would be
 3 better to ask that question to?
 4 A Barbara Rausch.
 5 Q Okay. Is there anyone who's not an
 6 attorney better to ask that question to?
 7 A (Witness shakes head.)
 8 Q All right.
 9 A I'm sorry.
 10 (Short break at 3:12 p.m., resumed at
 11 3:13 p.m.)
 12 THE WITNESS: Okay. Now I know.
 13 Q (BY MS. LONGWELL) Okay. Well, tell me
 14 what you know.
 15 A We spoke with David Pruitt, Jerry and I
 16 did the other day, and David Pruitt produced what
 17 he had sent over to the Secretary of Environment,
 18 so David Pruitt in water quality is the person.
 19 Q Okay. So he sent over those documents
 20 responsive to this request that included
 21 documents he had forwarded to the Secretary of
 22 Environment?
 23 A Yes. That's correct.
 24 Q Do you know if that production includes
 25 documents that may have been created by the

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1 ODEQ, but were not produced to the Secretary of
2 Environment?

3 A I don't know.

4 Q Do you know if that segregation I'm
5 making, meaning that there may be documents
6 which have not been provided to the Secretary of
7 Environment responsive to this request, do you
8 know whether they exist or not?

9 A I don't believe they do exist.

10 Q Okay. Because you've been told they
11 don't?

12 A That's correct.

13 Q Okay. But would David Pruitt be more
14 the appropriate person to ask that question to
15 whether they do, in fact, exist or not?

16 A That's -- I don't know.

17 Q Okay. Because what you said was, in
18 response, was that they -- that David Pruitt
19 provided those documents that had been forwarded
20 to the Secretary of Environment.

21 A Right.

22 Q This request is a little more expansive
23 than that, each document that are -- include
24 ODEQ -- pursuant to ODEQ's documents and data
25 related to ODEQ pursuant to the ODEQ's

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1 A No.

2 Q Okay. Let's move on to Request Number
3 20 -- oh. Where would those documents be
4 located?

5 A Water quality division box 65.

6 Q All right. Request Number 24 asks that
7 the ODEQ produce all documents and other
8 materials related to any executive sessions
9 involving any member or representative of ODEQ
10 required to be published, kept and/or maintained
11 under the open meeting -- Oklahoma Open Meeting
12 Act, 250 O.S. Section 301 in sequence, including
13 but not limited to notices, agendas and minutes
14 from January 2004 through the present. Can you
15 tell me what process you went through to identify
16 documents responsive to this request?

17 A I spoke with Barbara Rausch.

18 Q Okay. Are there documents produced by
19 the Department of Environmental Quality
20 responsive to this request?

21 A No.

22 Q So no documents have been produced.
23 Are there documents responsive to this request?

24 A No.

25 Q And when I say responsive, I mean, do

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1 coordination obligations and responsibilities
2 under Senate Bill 972 with the Secretary of
3 Environment, but it doesn't necessarily limit it to
4 just those transmitted. So I guess what I'm
5 asking is do you know whether all the documents
6 responsive to this request have been produced or
7 only those which have been forwarded to the
8 Secretary of Environment?

9 A We have produced all documents that we
10 have knowledge of to this request.

11 Q Okay.

12 A That are responsive to this request.

13 Q Okay. So although you had limited it
14 previously, you're saying you didn't necessarily
15 mean to limit it to just --

16 A No.

17 Q -- those forwarded to the Secretary of
18 Environment?

19 A No. No. I did not mean to limit it to
20 that. That's correct.

21 Q Okay. Thank you. To your knowledge,
22 have any documents that might be responsible --
23 responsive to this, excuse me, request, Number
24 23, to your knowledge, have any of those
25 documents been excluded from production?

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1 any documents exist within the ODEQ regarding
2 any executive sessions involving any member or
3 representative of ODEQ under the -- maintained
4 under the open meeting -- Oklahoma Open Meeting
5 Act?

6 A No.

7 Q Okay. Other than Barbara Rausch, did
8 you speak with any other individual within ODEQ
9 to find out whether these documents exist?

10 A No.

11 Q Looking at Request for Production
12 Number 25, it asks that ODEQ produce all
13 documents and data related to Sequoyah Fuels
14 Facility located in the vicinity of Gore, Oklahoma.
15 What process did you go through to identify
16 documents responsive to this request?

17 A We pulled all documents relating to
18 Sequoyah Fuels in all divisions.

19 Q And can you tell me which divisions had
20 information regarding Sequoyah Fuels?

21 A Water quality, land protection, air
22 quality, and ECLS.

23 Q Were there any records in legal regarding
24 Sequoyah Fuels?

25 A Yes. I'm sorry. Yes.

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1 Q Okay. Can you tell me the location of all
2 documents that have been produced regarding
3 Sequoyah Fuels Facility responsive to this request
4 where they're located upstairs?

5 A They will be in air quality box 1, ECLS
6 box 1 through 9, land protection boxes 1 through
7 21, water quality box 39, and then boxes 59
8 through 61, and if we have legal documents, they
9 could be in any of the boxes, 1 through 9, or
10 however many there are in legal.

11 Q Okay. Who did you speak with in the
12 water quality division regarding the documents
13 and data related to Sequoyah files?

14 A Jerry Perrin.

15 Q Okay. And who in the land protection
16 division?

17 A Sara Byers.

18 Q And who did you speak with in the air
19 quality division?

20 A Myself.

21 Q Okay. And who in ECLS?

22 A Ellen Akin.

23 Q Okay. And then legal, Barbara Rausch?

24 A No. Sandra McClain.

25 Q Okay. Sandra McClain.

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1 works within that division who just worked with
2 your individual custodians, division custodians?

3 A Yes.

4 Q Okay. Is it your understanding that all
5 documents and data related to Sequoyah Fuels
6 Facility have been produced in response to
7 Request Number 25?

8 A Yes.

9 Q To your knowledge have any documents
10 been excluded from production?

11 A No.

12 Q Okay. But, again, because you weren't in
13 direct communication with that division, you don't
14 know whether or not during that communication
15 they would have -- any division employee would
16 have indicated that certain documents may not be
17 responsive to this request that involves Sequoyah
18 Fuels?

19 A I disagree.

20 Q Okay.

21 A We're the records custodians, so we know
22 where the records are. We have control over the
23 records in the checkout process, and so we know
24 how to identify where the records are.

25 Q Uh-huh. But you don't know whether any

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1 A And may I clarify?

2 Q Uh-huh.

3 A When I say -- when you say who did you
4 speak with in these divisions, often these people
5 are the records custodians who work in central
6 records. They're actually in the administrative
7 services division

8 Q Okay.

9 A But they are records custodians for these
10 divisions, but they work for me.

11 Q Did you have any communications or
12 discussions with any individual who actually
13 works in the divisions, these particular divisions
14 regarding documents related to Sequoyah Fuels
15 Facility?

16 A I did not.

17 Q Okay. Do you know whether any of these
18 individual custodians, you know, division
19 custodians have had any communication with any
20 individual who actually works in that division that
21 they're the custodian of records for?

22 A Normal course of business would say that
23 they did, but I don't know that they did.

24 Q Okay. But you didn't have any, like,
25 discussions specifically with any individual who

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1 individual working within the division, however,
2 may have directed that custodian not to produce a
3 specific document, though? Would you have
4 knowledge of that conversation?

5 A I would have knowledge, but none of my
6 records clerks told me that.

7 Q Okay. You don't have, like, a process for
8 keeping track of anything along those lines in a
9 document production such as this, and I'm not
10 sure that you've ever been involved in one like
11 this, of this magnitude necessarily?

12 A Right.

13 Q Do you have any kind of internal protocol
14 to follow when working with the division to
15 determine documents that are responsive other
16 than just saying, "Okay. As the custodian I know
17 all these documents have Sequoyah Fuels name on
18 them. Here's these files, but which documents do
19 I pick to be selected?" You're not -- as custodian
20 of records you're not making that determination,
21 are you?

22 A I make the determination that if a request
23 is for all of a facility, I do make that
24 determination, yes.

25 Q Okay.

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1 A And we do have a process.

2 Q Okay.

3 A For each division, the records custodian

4 will either e-mail or go down to the division to the

5 program.

6 Q Uh-huh.

7 A And will request documents being

8 returned or just request that anything they might

9 have on their desk be sent up to central records

10 because of this request for production.

11 Q Okay. And once -- and since we're

12 talking about the process, once you guys -- once

13 you have gathered those documents, what do you

14 do next with them?

15 A Once we've gathered the documents, we

16 make sure that they're in an organized format, and

17 then we put them in boxes, inventory them, create

18 electronic inventories if it's not already created,

19 and add it to our list.

20 Q Okay. And then at that point, does

21 someone else step in to review the documents that

22 you've chosen as being responsive to the requests

23 that have been made upon the agency? Like in

24 this instance, did an attorney from legal or maybe

25 outside counsel for the state come back in and

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1 Q (BY MS. LONGWELL) Okay. Let's go on

2 to Request Number 26. It says, "Produce all

3 documents and data related to management,

4 treatment and/or disposal of solid waste,

5 semi-solid waste, liquid waste, wastewater and

6 sewage generated from Tenkiller State Park, Adair

7 State Park, Natural Falls State Park, and Cherokee

8 Landing State Park." Did I read that correctly?

9 A Yes.

10 Q Okay. What divisions of ODEQ were

11 involved in producing documents responsive to

12 this request?

13 A Are you asking me which divisions

14 produced or which divisions were asked?

15 Q Well, tell me first which divisions were

16 asked.

17 A All divisions were asked. The only

18 responsive documents we had were from water

19 quality.

20 Q Okay.

21 A And may I say that when all divisions

22 were asked, all custodians of records were asked.

23 Q Okay.

24 A And then they --

25 Q To review the division's files to determine

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1 conduct a review behind you after you and your

2 custodians --

3 A Yes.

4 Q -- pulled the documents together?

5 A Yes.

6 Q Okay. And were you involved in that

7 review at all?

8 A Yes.

9 Q You were involved in that review?

10 A I was involved -- yeah. I was involved in

11 the -- I don't know how to put that. I was in the

12 room, yes.

13 Q Okay.

14 A Yes.

15 Q And I'll go back to that. We'll go back to

16 discussing that in greater detail, but we'll move

17 forward right now through the requests. It helps

18 me maybe to understand a little bit more since you

19 went through that protocol of what's transpiring,

20 and maybe simplify my requests -- my questions to

21 you today.

22 A Sure.

23 Q Let's look at -- did I get a location for

24 everything? I think I did.

25 MR. BEATY: Yes.

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1 whether or not the documents were responsive?

2 A Yes.

3 Q And is that an electronic -- you keep

4 track of documents and files electronically or

5 physically? I mean, is there a physical inventory

6 or is it more of an electronic inventory?

7 A Of all the records?

8 Q Yes.

9 A They're electronic.

10 Q Okay. So when you conducted a search,

11 would that have involved your custodian getting

12 on that electronic system and querying it for

13 documents that were responsive?

14 A They actually -- they do three things.

15 Q Okay.

16 A They look at the electronic inventory,

17 they do a physical search in the records, and they

18 go to the division to ascertain if there are other

19 records that are responsive.

20 Q Okay. And for -- okay. So you found that

21 the only division that had documents that were

22 responsive to this request was the water quality

23 division?

24 A That's correct.

25 Q Okay. But there were documents that

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1 were responsive to this request?

2 A Yes.

3 Q Okay. And have all of those documents
4 been produced?

5 A Yes.

6 Q Did you speak with anyone other than
7 Jerry Perrin with regards to this specific request?

8 A I did.

9 Q Who did you speak with?

10 A David Pruitt.

11 Q Okay. Where would the documents
12 responsive to this request be located?

13 A Water quality division box 3

14 Q Is there any -- to your knowledge, is
15 there any portion of Request Number 26, any
16 activity within Request Number 26 that's not
17 regulated by the ODEQ?

18 A I have no knowledge of that.

19 Q Do you know of any other agencies that
20 would have this information besides the ODEQ?

21 A I apologize. I have a note here. The
22 solid waste and the semi-solid waste are both
23 regulated by cities.

24 Q And any -- and the management of those
25 if they result in -- well, I won't ask that question.

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1 (Off the record at 3:31 p.m., resumed at
2 3:32 p.m.)

3 Q (BY MS. LONGWELL) Including 27F,
4 which says communications about this particular
5 lawsuit?

6 A Yes.

7 Q Okay. To your knowledge, have any of the
8 documents that have been identified as responsive
9 to this request been excluded from production to
10 us?

11 A No.

12 Q Okay. Let's look at Request for
13 Production Number 28 which asks that the ODEQ
14 produce all documents and data related to any
15 communication with any representative of the
16 state of Arkansas or its political subdivisions,
17 agencies and commissions. Did you identify any
18 documents responsive to Request for Production
19 Number 28?

20 A Not specific documents, but, again, we
21 believe that they'll be scattered throughout those
22 -- all of the records.

23 Q Okay. Just, basically, do you have
24 electronic documents -- do you believe you might
25 have electronic documents as well?

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1 Strike that. All right. Request Number 27 asks for
2 all documents and data related to any
3 communication with any representative of the
4 federal government or its agencies regarding the --
5 with regard to the Illinois River Watershed,
6 including but not limited to communications with
7 regards to, and under Letter A it says Oklahoma's
8 duties and/or obligations imposed by federal law
9 pertaining to resources, facilities, operations or
10 conditions in the Illinois River Watershed from
11 1980 to the present. Did you find any documents
12 responsive to Request Number 27A?

13 A We did not pull specifically for this. We
14 believe that for this request, responsive
15 documents will be in any of the boxes up there in
16 any of the divisions.

17 Q Okay. So you're saying there's no -- it's
18 going to be scattered throughout all the boxes?

19 A That's correct.

20 Q And that's with regards to A, B, C, D, E
21 and F under Request Number 27?

22 A That's correct. We also believe these will
23 be -- there will be electronic documents that we
24 have not provided at this time.

25 Q Okay. Off the record for just a second.

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1 A There could be -- there could be hard
2 copy or electronic.

3 Q Let me stop for just a second. We're at a
4 Request Number 28, and I want to go back and say
5 other than the ones you've told me now, Request
6 Number 27, you said Request Number 28 may have
7 -- there may be electronic documents. Are there
8 any other of the requests prior to these, to 28 and
9 27, that there are electrical -- electric documents
10 available that have not been produced yet?

11 A I don't know.

12 Q Okay. Has a search been conducted for
13 those documents electronically that are responsive
14 to the previous, 26, request?

15 A I believe the search is ongoing.

16 Q Okay. But there is a search that has
17 been conducted, and there may be additional
18 documents identified that are responsive in
19 electronic format other than those in physical
20 format upstairs?

21 A That is possible.

22 Q Has the agency identified any before
23 letting my client know whether or not you identify
24 additional documents responsive to my discovery
25 requests?

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1 A I guess I don't understand what you're
2 asking.
3 Q I guess my question is does the ODEQ
4 intend on letting my client know if they identify
5 additional documents responsive to these
6 requests?
7 A As far as the paper documents are
8 concerned, yes. We, in the records interval,
9 continue to accrue documents daily, and we will
10 let you know when new documents come in. Before
11 filing we will allow you to come in and copy or
12 photocopy or image or whatever it is you need to
13 do, yes.
14 Q And then through state's counsel are you
15 going to -- I'm assuming it's going to come
16 through state's counsel, but obviously if you
17 identify electronic documents, are you also going
18 to inform state's counsel there's documents that
19 have been identified in electronic form --
20 A Yes.
21 Q -- that are responsive to the requests?
22 A Yes.
23 Q So the location of the documents that are
24 responsive in Request Number 28 would be --
25 could be potentially through any division boxes?

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1 A Yes.
2 Q Okay. Do you recall identifying any
3 documents responsive to this request?
4 A The records request we have received
5 from the defendants.
6 Q Okay.
7 A We've produced those.
8 Q Okay. I noticed when I was upstairs
9 there was a box that said "Simmons Foods" on it.
10 So obviously there's something there that's related
11 to a defendant in this lawsuit, correct?
12 A Uh-huh. Uh-huh.
13 Q Okay. But you can't specifically identify
14 the location of anything else?
15 A No.
16 Q Okay. To your knowledge have any
17 documents or data responsive to this request been
18 excluded?
19 A No.
20 Q We're making such headway, but I want to
21 ask you because I don't want to be rude. Do you
22 need to take a break?
23 A I'm okay.
24 Q Okay.
25 MR. NANCE: Pass that around. See if it

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1 A That's correct.
2 Q Okay. To your knowledge, have all
3 documents and data related to Request Number 28
4 been produced unless it's in electronic format?
5 A Yes.
6 Q To your knowledge, have any of the
7 documents that would be responsive to Request
8 Number 28 been excluded from the production?
9 A No.
10 Q Let's look at Request for Production
11 Number 29. It asks that the ODEQ produce all
12 documents and data related to any communication
13 with any representative of any defendant in the
14 above-styled lawsuit. Did you identify documents
15 responsive to this request?
16 A We believe that they are spread
17 throughout the various divisions, if there are any
18 there.
19 Q And did you undertake the same search
20 that you described, the three-step search where
21 you looked electronically, you looked physically
22 through the files, and then you talked to each
23 division --
24 A Yes.
25 Q -- with regards to Request Number 29?

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1 will help the examination.
2 Q (BY MS. LONGWELL) Thank you. My
3 throat just can't take any more.
4 A Do you want to take a break?
5 Q Huh-uh. Let's go to Request for
6 Production Number 30 which asks for all
7 documents and data relating to any impact on the
8 environment or natural resources in the Illinois
9 River Watershed from poultry or poultry-related
10 operations. Did you identify any documents
11 responsive to this request?
12 A We have -- any documents that are
13 responsive to this request are spread throughout
14 the division boxes.
15 Q Okay. And once again, what process did
16 you undertake to identify documents responsive to
17 this request?
18 A Basically by pulling the four counties and
19 then responding to -- or pulling anything from the
20 divisions in those four counties. It was
21 all-inclusive.
22 Q Okay. To your knowledge, have any
23 documents that were responsive been excluded
24 from production in regards to this request?
25 A No.

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1 Q And all of the divisions were searched for
2 documents responsive to this request, correct?

3 A That's correct.

4 Q Looking at Request Number 31, which
5 asks for all documents and data relating to any
6 impact on the environment or natural resources in
7 the Illinois River Watershed from sources other
8 than poultry or poultry-related operations. Did
9 you identify any documents responsive to this
10 request?

11 A Yes.

12 Q Do you have specific locations for those
13 documents you believe are responsive to this
14 request?

15 A No. They're spread throughout the
16 division -- divisional boxes.

17 Q Once again, did you search throughout
18 each of the divisions for documents responsive to
19 this request?

20 A I specifically did not, but the records
21 custodians did.

22 Q Okay. And then do you know of any
23 documents that have been excluded that may be
24 responsive to this request?

25 A No.

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1 A It is possible we could have -- we could
2 have complaints. We could have NOV's.

3 Q Okay. Is there any specific division in
4 the ODEQ that would -- that threats to the human
5 health or safety based on a potential condition of
6 the environment or the natural resources in the
7 Illinois River Watershed would have jurisdiction
8 over or, you know, would be within that division's
9 regulatory powers?

10 A Well, it would depend on the media.

11 Q Meaning whether it's air or water?

12 A Or land.

13 Q Or land. Okay. So each of the divisions
14 could have information related to this particular
15 request?

16 A That's correct.

17 Q And each of those divisions were polled to
18 determine whether or not --

19 A Yes.

20 Q -- there were documents responsive?

21 A Yes.

22 Q And you're saying that you believe if
23 there are any they would be within -- they could
24 be scattered throughout the entire production?

25 A Yes.

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1 Q Number 32 asks for information -- all
2 documents and data relating to any prior, current
3 or potential threat to human health and/or safety
4 posed by any current -- prior, current or potential
5 condition of the environment or natural resources
6 within the Illinois River Watershed. Did you
7 identify documents responsive to this request?

8 A We believe that if there are documents,
9 they are in all of the files.

10 Q Okay. Now, when you said that ODEQ
11 was formed in, and I may be wrong in my history
12 here, 1994, and maybe only specific things were
13 formed in 1994, but that they took on some of the
14 responsibilities from the Health Department?

15 A That's correct, and I believe it was '93. I
16 apologize.

17 Q That's all right. '93. Obviously threats
18 to the human health or safety would be
19 encompassed in the Health Department, and I'm
20 wondering if any of those documents related to
21 human health or safety issues in the environment
22 or natural resources of the Illinois River
23 Watershed would have come to the ODEQ at that
24 time. Would that be accurate? I say assumption, I
25 guess, is maybe more --

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1 Q But do you recall identifying any
2 documents that you -- that were specifically
3 responsive to this particular request?

4 A I do not.

5 Q To your knowledge, were any documents
6 excluded that would have been responsive to this
7 request?

8 A No.

9 Q Looking at Request Number 33, it asks
10 that all documents and data related to
11 management, handling, treatment and/or disposal
12 of solid wastes within the Illinois River Watershed
13 from 1980 to the present. Were any documents
14 identified which were responsive of this request?

15 A Yes.

16 Q Do you have a specific location for them?

17 A They are in the land protection boxes --
18 or box 24.

19 Q Is there any other division that would
20 have any responsibility with regards to this
21 request?

22 A No.

23 Q Were there any documents that were
24 identified as being responsive to this request
25 which have been excluded --

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1 A No.

2 Q -- from production? Sorry. I didn't
3 finish the question. No, it's my fault. I didn't
4 finish the question. Let me go back -- backtrack
5 and just say so you're telling me there's no
6 documents that were identified to your knowledge
7 that have been excluded from the production that
8 were responsive to this request?

9 A That's correct.

10 Q Okay. Were there any time restrictions
11 with regards to the documents that have been
12 produced by the land protection division, and
13 we've asked from 1980 to the present? Was there
14 any time restriction with regards to this
15 production?

16 A I don't understand what you mean by time
17 restriction.

18 Q Did you have records -- did you find
19 records all the way back to 1980 regarding
20 management, handling, treatment and disposal of
21 solid wastes in the Illinois River Watershed?

22 A I'm not sure of the dates. I know we
23 found closed landfills that we did provide in this
24 production.

25 Q Okay. Were there any specific facilities

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1 A I'm sorry. I met with my group, Jerry,
2 Sara, Ellen, and Sandra.

3 Q That's right. Okay.

4 A And then I also met with Barbara, and
5 then I met with David.

6 Q Okay. Did you identify any documents
7 which were responsive to this request?

8 A Not specifically, but we believe if there
9 are any that are responsive, they are in all the
10 records.

11 Q Okay. Do you know of any documents
12 which were identified as responsive to this request
13 that were excluded from the production?

14 A No.

15 Q So is it your understanding that any
16 document or data that's responsive to this request
17 have been produced?

18 A Yes.

19 Q Is there any electronic data that exists
20 that may be responsive to this request?

21 A I don't know.

22 Q Is your group in the process of
23 identifying any electronic data that might be
24 responsive to this request?

25 A Yes.

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1 or municipalities or other entities that might have
2 been involved in disposal of solid wastes or
3 treatment of solid wastes that were excluded from
4 production?

5 A No.

6 Q Okay. Request Number 34 asks that the
7 ODEQ produce all documents and data that relate
8 to or identify any condition within the Illinois
9 River Watershed which is currently or may present
10 an imminent and substantial endangerment to the
11 health or the environment. Did I read that
12 correctly?

13 A Yes.

14 Q Is there -- what individuals did you speak
15 with within the ODEQ regarding this particular
16 request?

17 A I spoke with Jerry Perrin, Sara Byers,
18 Ellen Akin, Sandra McClain, David pruit, Barbara
19 Rausch.

20 Q Did you have discussions with them
21 separately or was that a combined --

22 A Several meetings. Meetings.

23 Q Were all of you involved?

24 A No.

25 Q Then who?

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1 Q Okay. Request Number 35 says, "Produce
2 all documents and data related to the dispute
3 between the state of Oklahoma and its attorney
4 and members of the poultry industry, including
5 but not limited to the above lawsuit, whether
6 created before or after the filing of the lawsuit on
7 June 13, 2005." Did you identify any documents
8 responsive to this request?

9 A Not specifically. If there are any, they
10 would be in all of the records or, again, in the
11 central records request produced.

12 Q So there's documents that you're saying
13 could be contained in legal, and water quality
14 division --

15 A That is possible.

16 Q -- and the ECLS files? Do you recall any
17 documents being specifically identified as being
18 responsive to this request?

19 A No.

20 Q Is it your understanding that all
21 documents and data which are -- which are in the
22 possession of the ODEQ and responsive to this
23 request have been produced?

24 A Yes.

25 Q Are you looking for any electronic data

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1 that may -- that may be responsive to this
2 request?

3 A Yes.

4 Q To your knowledge, has any been
5 identified as being responsive to this request?

6 A Not to my knowledge.

7 Q In your search for this information and
8 specifically those requests that ask for
9 communication and correspondence, did you
10 search the e-mail -- e-mail records of the
11 individuals in ODEQ for documents that might be
12 responsive to these requests or, like, e-mails that
13 may be responsive to these requests?

14 A Did I as the records custodian?

15 Q Yes.

16 A I did not.

17 Q Do you know if anyone in ODEQ did
18 search e-mail servers for documents -- for e-mails
19 that may be responsive to any particular requests?

20 A Yes, they did.

21 Q Okay. Do you know who that individual
22 would have been?

23 A Individuals searched their e-mail boxes.

24 Q Okay.

25 A And then Roy Walker with the IT group

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1 yes.

2 Q Okay. But at this point in time you're
3 not aware of any e-mails that have been identified
4 as responsive necessarily to these requests at this
5 time or have you? Let me ask it that way. Have
6 you identified any e-mails that are responsive to
7 the requests within --

8 A To this specific request?

9 Q No. To the requests we've covered up to
10 this point. Let me -- strike that. Let me ask it
11 this way. Of the documents that you have
12 identified for me from Request 1 to now, we're up
13 to Request 35, you've indicated there are
14 documents that have been identified as responsive
15 to most of these requests?

16 A Uh-huh.

17 Q Do those documents include e-mails?

18 A From the records group?

19 Q No.

20 A No?

21 Q E-mails from individuals within the
22 agency whom -- or the divisions, various divisions
23 that have been going about doing ODEQ business
24 and that have business that may be related
25 specifically to these requests?

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1 was also -- was in charge of the electronic.

2 Q Do you know which individuals were
3 tasked with searching their e-mail servers?

4 A I know what ones in my group. It was all
5 of my group. I don't know throughout the agency.

6 Q And when you say your group, are you
7 referring to your administrative custodian group, I
8 mean, because you said to me -- you've indicated
9 to me that you handle custodian -- the custodian
10 aspect of administrative responsibilities, but your
11 duties are a little bit more expanded than that.
12 Are you saying that this search was just limited to
13 those individuals who handle management of the
14 documents?

15 A I can only tell you that those records
16 custodians did search their e-mails. It is my
17 understanding that the agency is on -- is
18 conducting an ongoing search.

19 Q Okay. And then once they identify
20 documents that may be responsive either, like,
21 electronically or, I mean, obviously you can print
22 out an e-mail and that can make it physical. If it
23 becomes physical, are you going to be in charge of
24 managing those documents?

25 A I would -- I would believe that I would be,

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1 A Yes. I believe there are responsive
2 e-mails to these -- to some of these requests.

3 Q Okay. And those have been provided in
4 physical format?

5 A That is not true, no.

6 Q Okay. They haven't been provided
7 electronically, though?

8 A That is correct.

9 Q Okay.

10 A It's my understanding we're not to
11 provide those yet.

12 Q Correct. So I guess what I'm asking you
13 is you say there have been e-mails that have been
14 identified as responsive to these requests?

15 A That's correct.

16 Q Are any of those -- have any of those
17 e-mails been printed out and put in the
18 production -- in the physical production that's
19 upstairs?

20 A That is possible.

21 Q Okay.

22 A There are possibly e-mails in there, but
23 that was not a direction that I gave to that group,
24 and so it is -- I don't have knowledge of any
25 specific e-mails in there.

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1 Q Okay. So from your understanding,
2 although your search has encompassed to some
3 extent searching e-mail, those e-mails have not all
4 necessarily been produced at this point in time?

5 A In hard copy. That is correct.

6 Q In hard copy or in electronic because we
7 haven't -- the parties haven't come to an
8 agreement with regards to that at this point?

9 A That's correct.

10 Q Okay. And when the time comes for
11 production, will you be the individual who will be
12 in charge of managing that kind of production as
13 well?

14 A I don't know.

15 Q Okay. Let's move on to Request Number
16 36 which asks for all documents and data related
17 to public, Environmental Protection Agency,
18 and/or Peer Review comments from the March 31,
19 2001 TMDL modeling report by ODEQ and EPA.
20 Were any documents identified as responsive to
21 this request?

22 A They are, but these are -- I was told by
23 Mark Derichsweiler that these were not sent out
24 for public review, but there are responsive
25 documents in boxes 62 through 66.

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1 modeling activities, which would include all
2 documents and data created prior to, during or
3 after the completion of any report, study or
4 project until the present. Did you identify any
5 reports or studies or projects undertaken or
6 contemplated by the ODEQ with regards to the
7 Lake Tenkiller TMDL modeling activity?

8 A We believe that there are responsive
9 documents in water quality division boxes 62
10 through 66.

11 Q Did you identify any other agency -- I
12 mean, any other division of the agency which
13 would have documents responsive to this?

14 A No.

15 Q And did those documents produced
16 include projects, studies, and reports that may
17 not have been completed as of today but are in
18 process with regards to the TMDL?

19 A Included all documents identified, yes.

20 Q Okay. Have any documents that are
21 responsive to this request been excluded in
22 production?

23 A No.

24 Q Did you identify any electronic data that
25 was responsive to this request?

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1 Q So he's indicated that he doesn't think
2 that any of the comments were sent out for public
3 review?

4 A Yes.

5 Q Did that -- did he direct you not to
6 produce any of those comments --

7 A No.

8 Q -- that weren't released to the public?

9 A No, he did not.

10 Q So those have been produced if they
11 exist, and they would be in box 62 through 66?

12 A From water quality, yes.

13 Q Do you know of any documents that may
14 be responsive to this request that have not been
15 produced?

16 A No.

17 Q And when you say box 62 through 66, are
18 we talking about the water quality division?

19 A Yes.

20 Q All right. Let's look at Request Number
21 37 which asks that the ODEQ produce all
22 documents and data related to any reports,
23 studies issued or projects undertaken or
24 contemplated, whether or not completed, since
25 March 31, 2001 related to the Lake Tenkiller TMDL

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1 A Not at this time.

2 Q Are there any databases within ODEQ
3 that may have information that formed the basis
4 of any report, study, or project --

5 A I don't know.

6 Q -- related to the TMDL?

7 A I don't know.

8 Q Did you search for any databases at all --
9 did you search through any of ODEQ's databases
10 at all with regards to these specific requests like
11 for the TMDL process?

12 A No.

13 Q Okay.

14 A I did not.

15 Q Okay. But your custodian over the water
16 quality division, would they have done that?
17 Would that have been part of their process?

18 A Yes.

19 Q Okay.

20 A Or speaking with people in the divisions.
21 That would have been part of their jobs.

22 Q There's a couple of requests where we've
23 been -- and I don't mean to keep backtracking, but
24 more specifically the ones where we were -- we had
25 long drawn out lists of information, and then we'd

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1 come up against a request that asked for studies,
2 and reports, and data, and documents related to
3 studies and reports. Some of it was sludge
4 management. Some of it was water treatment, and
5 in the process of looking for documents responsive
6 to this, did you identify -- do you know whether
7 any databases were identified that may contain
8 data that supported any study or report contained
9 in the -- you know, physical study or report that's
10 up there in those boxes?

11 A Electronic databases?

12 Q Yes.

13 A I don't know.

14 Q Who would know that?

15 A I believe it's ongoing, so at some point
16 Roy Walker will know.

17 Q Okay. But the search is ongoing?

18 A Yes.

19 Q Okay. To your knowledge, was there any
20 environmental sampling that was conducted in one
21 of these reports, studies, or projects on the Lake
22 Tenkiller TMDL? Do you know whether any
23 sampling that had been -- or sampling data --
24 environmental sampling data or an environmental
25 sampling data result that were identified

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1 two, change detection results; number three,
2 modeling results including scenario comparisons;
3 four, GIS files including imagery and modeling
4 results; and, five, final report of all activities in
5 phase two. Did you identify any documents within
6 ODEQ's files responsive to Request Number 38?

7 A If we have any files that are responsive,
8 they would be in electronic format, and they would
9 be responsive to B4, GIS files.

10 Q Okay. Are you telling me that you did not
11 identify within ODEQ's files this document titled
12 "Proposed Scope of Work for Illinois River/Lake
13 Tenkiller Project" either electronically or in
14 physical format?

15 A That's correct.

16 Q And so obviously because we haven't an
17 agreement yet with regards to the electronic stuff,
18 the production of what's in B4 is not upstairs for
19 us?

20 A That's correct.

21 Q Do you know whether an e-mail -- a
22 review of -- let me say this a different way -- a
23 search into e-mails, individual's e-mails was
24 conducted with regards to whether any individual
25 within the ODEQ had received this particular

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1 responsive to this request?

2 A I don't know.

3 Q Were you directed to pull from production
4 any environmental sampling data or sampling data
5 reports -- result reports from documents that were
6 responsive to this particular request?

7 A No.

8 Q Let's look at Request Number 38.
9 Request Number 38 asks that all documents and
10 data reviewed and/or generated by Applied
11 Analysis, Inc., and/or Dr. Scott Stoodely of
12 Applied Analysis, Inc., related to the, and this is
13 in quotations, "Proposed Scope of Work for Illinois
14 River/Lake Tenkiller Project," submitted to the
15 Oklahoma Attorney General's office on March 22,
16 2002 by Dr. Scott Stoodely, including but not
17 necessarily limited to the documents and data
18 which were included in the "Phase I Literature
19 Review" referred to by Dr. Stoodely in the
20 proposed scope of work, and, B, any and all
21 deliverables by AAI and/or Dr. Scott Stoodely
22 related to the proposed scope of the work,
23 including but not limited to, one, land cover
24 spatial data associated with processing of TM
25 imagery and registered IRONOS imagery; number

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1 piece of work proposed scope of work for Illinois
2 River/Lake Tenkiller project?

3 A Do I know if it was requested?

4 Q If it was done. Yeah.

5 A If a search was conducted?

6 Q An e-mail search --

7 A Yes.

8 Q -- was conducted to see if someone --
9 anyone within the ODEQ had received this
10 particular document?

11 A I don't know if this particular document
12 was searched for. I know that any documents
13 pertaining to the Illinois River were searched for.

14 Q And that search would have been
15 conducted I'm assuming then by your custodians
16 and then also Roy -- I don't have his name here --
17 Walker?

18 A Walker. That's correct.

19 Q But to your knowledge, none have been
20 identified with the exception of B4?

21 A That's correct.

22 Q Has ODEQ been directed to your
23 knowledge not to produce any information with the
24 exception of what we talked about before at this
25 point in time and any of the information requested

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1 in Request Number 38?

2 A No.

3 Q Okay. Let's go to Request Number 39.

4 Request Number 29 asks that all documents, data

5 and/or deliverables related to the July 23, 2002

6 draft scope of work entitled "Estimating Threshold

7 Soil Phosphorus Levels for the Illinois River Basin

8 Using SWAT" submitted to the Oklahoma Attorney

9 General's office by Dr. Daniel Storm, and Mr.

10 Michael J. White of Biosystems and Agricultural

11 Engineering Department at Oklahoma State

12 University. Did you identify any documents

13 responsive to this request?

14 A I don't believe so.

15 Q Do you know what search was undertaken

16 to identify documents, data or deliverables

17 associated with this -- the work identified in

18 Request Number 39?

19 A Just the same process we've used.

20 Q Okay. And do you know whether an

21 e-mail search, individual e-mail, within ODEQ was

22 searched for, these particular documents?

23 A I believe it's ongoing

24 Q But at this point in time, you haven't

25 identified anything responsive?

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1 that was submitted to the ODEQ?

2 A I can't specifically say that they are in

3 there. If we have them, they are in there, but if

4 we weren't able to locate them, then they're not. I

5 don't know.

6 Q But you just don't know specifically

7 whether these documents are located in water

8 quality division boxes 62 through 66?

9 A I don't. I know the grant files are located

10 in boxes 62 through 66.

11 Q And I guess -- and this may be

12 premature, but I'm not sure how many bites of

13 this apple I'm going to get, so let me ask it

14 anyway, and that is if these documents which were

15 submitted to the ODEQ were not located in these

16 boxes, where else within the ODEQ would they be

17 located?

18 A I don't know.

19 Q Do you know whether an e-mail search

20 was conducted to identify whether any individual

21 had received these documents or had these

22 documents by e-mail?

23 A I know that the e-mail search is ongoing

24 for all responsive documents.

25 Q To your knowledge -- well, at this point

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1 A We have not.

2 Q Okay. And you haven't been directed to

3 exclude any documents related to Request Number

4 39, have you?

5 A No.

6 Q I'm looking at Request Number 40,

7 produce all documents, data and/or deliverables

8 related to the August 2003 revision of Project 34,

9 comma, Grant Number 1-006400-03, comma, 106

10 FY03 Carryover, comma, entitled "Review of

11 Monitoring and Assessment Data to Support

12 Development of TMDL for Lake Tenkiller and the

13 Illinois River Watershed" and attached scope of

14 work entitled "Modeling Nutrients in the Illinois

15 River Water -- the Illinois River Basin Using

16 SWAT" submitted to ODEQ by Daniel Storm and

17 Michael White. Did you identify documents

18 responsive to this request?

19 A Our grant documents are located in the

20 water quality files boxes 62 through 66. If we

21 found documents responsive to this, that's where

22 those documents will be.

23 Q Okay. Including the form -- the

24 documents themselves, these two scope of work

25 and the review of the monitoring and assessment

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1 in time, have you been directed not to produce any

2 documents responsive to Request Number 40?

3 A No.

4 Q Let's look at Request Number 41 which

5 asks that ODEQ produce all documents, data

6 and/or deliverables related to the March 2005

7 revision of Project 17, formerly Project 34, revised

8 August 2004, comma, CA Number 1-006400-05,

9 comma, FY 05/06 Section 106 Carryover work plan

10 entitled "Review of Monitoring and Assessment

11 Data to Support Development of TMDL for Lake

12 Tenkiller and Illinois River Watershed" and

13 attached scope of work entitled "Modeling

14 Nutrients in the Illinois River Water Basin Using

15 Swat" submitted to ODEQ by Daniel Storm and

16 Michael White. Obviously this is a revision of the

17 previous document we were talking about. Is your

18 answer the same for this with regards to your

19 search for these documents --

20 A Yes.

21 Q -- responsive to Request Number 41?

22 A Yes.

23 Q Is your answer the same with regards to

24 whether you've identified documents that are

25 responsive to Request Number 41?

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1 A Yes.
 2 Q And so if you have identified them, they
 3 would be located in water quality division boxes
 4 62 through 66 in your grant files?
 5 A That's correct, or in the electronic
 6 format.
 7 Q Okay. Which is an ongoing search?
 8 A That's correct.
 9 Q Okay. And, again, have you been directed
 10 to exclude any of these -- any documents, data or
 11 deliverables associated with Request Number 41?
 12 A No.
 13 Q Request Number 42 asks that ODEQ
 14 produce all documents, data and/or deliverables
 15 related to the June 28, 2004 scope of work
 16 entitled "Modeling Nutrients in the Illinois River
 17 Water Basin Using Swat" submitted to the ODEQ
 18 by Dr. Daniel E. Storm and Mr. Michael J. White
 19 of Biosystems and Agricultural Engineering
 20 Department of Oklahoma State University,
 21 including but not limited to those formal
 22 deliverables listed on page 18 of 31 of that work
 23 plan. First, let me ask you did you identify or find
 24 the work plan entitled "Modeling Nutrients in the
 25 Illinois River Basin Using Swat"?

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1 have located them.
 2 Q Okay. I guess I'm confused as to that.
 3 Does that mean that you know they exist, you're
 4 just not sure -- you know they exist within your
 5 electronic files. You just don't know where they
 6 are?
 7 A I was told by Jerry Perrin who was told by
 8 Ilda Hershey that these are electronic files.
 9 Q Okay. I just want to make sure you have
 10 them -- ODEQ has them within their custody?
 11 A Sure.
 12 Q And the answer to that question is?
 13 A I don't know.
 14 Q You don't know. What will have to
 15 transpire before you know with any certainty
 16 whether that exists electronically or not?
 17 A I will have to have a meeting with Roy
 18 Walker and Barbara Rausch, probably other
 19 divisions.
 20 Q Okay. Has the search been started -- has
 21 the search already started for identifying that
 22 deliverable -- that document -- well, those files?
 23 A Yes.
 24 Q Okay. Then let's move on to the next one,
 25 the technical memorandum documenting the

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1 A Yes, we did.
 2 Q Okay. And where would that work plan be
 3 located?
 4 A That's in box 72A.
 5 Q And that is, again, the water quality
 6 division?
 7 A Yes. I'm sorry.
 8 Q Okay. So now that you've indicated that
 9 you identified the work plan, it's asking -- the
 10 request asks for formal deliverables that are listed
 11 on page 18 of 31 of that work plan which includes
 12 the Quality Assurance Project Plan entitled "FY
 13 05/06 Section 106 Work Plan, Project 17, formerly
 14 34." Did you locate that formal deliverable?
 15 A We did not specifically locate that. We
 16 believe that if we have it, it's in the grant box 72
 17 for water quality.
 18 Q Okay. And updated EFDC input files;
 19 current version of EFDC source code/executable
 20 files; updated EFDC Explorer and memorandum
 21 documenting files?
 22 A Those are electronic files.
 23 Q You have identified them, though?
 24 A We have identified them to the extent
 25 that they are electronic. I don't know that we

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1 results of the review and evaluation of the
 2 watershed runoff model HSPF input files, setup,
 3 and results. Have you identified that
 4 memorandum, those files -- and those files either
 5 electronically or in physical format?
 6 A I have not.
 7 Q Is there a search underway to try to
 8 identify those?
 9 A Yes.
 10 Q And next is a technical memorandum
 11 documenting results of review and evaluation of
 12 existing EFDC water quality model with
 13 recommendations for modifications to code. Have
 14 you identified that technical memorandum?
 15 A No.
 16 Q Is there any effort underway to identify
 17 whether that exists within ODEQ's files?
 18 A Yes.
 19 Q What's the process that's being used to
 20 identify that at this point?
 21 A I don't know.
 22 Q Okay. Is this something that Roy Walker
 23 is handling --
 24 A Yes.
 25 Q -- through the electronic files?

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1 A Yes.
 2 Q Has a physical -- has a search been
 3 conducted or at least physically to the extent that
 4 it can be based on this type of information we're
 5 looking at here?
 6 A Yes.
 7 Q To determine whether it exists
 8 physically?
 9 A Yes.
 10 Q And what were the results of that search?
 11 A We have not identified these documents.
 12 Q Okay. Looking at the rest of that, let's
 13 just say the next two items are both technical
 14 memorandums dealing with this particular work
 15 plan. Are your answers the same for the next two
 16 bullets that a physical search has been
 17 undertaken and there's been no physical
 18 documents identified responsive to those?
 19 A Yes.
 20 Q Okay. And that there is currently a
 21 search going for those -- to identify these
 22 memorandums electronically?
 23 A Yes.
 24 Q But that search has not been completed
 25 yet?

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1 Q But the search is still undergoing? They
 2 haven't stopped searching for these documents?
 3 A No.
 4 Q Okay. Just at this time when you sit
 5 here today, you have not identified it either
 6 physically or electronically?
 7 A That's right.
 8 Q Looking at the last bullet point, it's
 9 training materials including model documentation,
 10 software, and input and output files. Have any
 11 documents either in physical or electronic format
 12 been identified that are responsive to this
 13 request?
 14 A Not to my knowledge.
 15 Q Is a search underway to determine
 16 whether they are in ODEQ's files?
 17 A Yes.
 18 Q Okay. We're almost done, and what I'd
 19 like to do is try to get through to 46, take a brief
 20 break, make sure there's no other questions, and
 21 then move forward, but if you need a break right
 22 now, I want to let you take it.
 23 A No. I'm okay.
 24 Q Okay. With regards to Request Number
 25 42, is there any file, memorandum, report

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1 A That's correct.
 2 Q So you can't tell me whether or not those,
 3 with regards to the next two bullet points,
 4 whether those memorandums exist within ODEQ's
 5 electronic files?
 6 A I cannot.
 7 Q The next bullet point is a draft technical
 8 report documenting the application of the
 9 recalibrated model to TMDL assessments and
 10 results of the re-calibration of the EFDC Tenkiller
 11 Ferry Lake model. Have you identified any
 12 physical document -- this document in physical
 13 form?
 14 A No.
 15 Q Have you identified it electronically?
 16 A No.
 17 Q Is a search underway to identify it either
 18 physically or electronically?
 19 A Electronically, yes.
 20 Q Okay. And the results are the same for
 21 your physical search? You did not find it
 22 physically?
 23 A That's correct. We did not identify it.
 24 There is the possibility that it is in the records
 25 and we just did not locate it.

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1 identified within Request Number 42 that ODEQ --
 2 you have been directed not to produce in response
 3 to this request?
 4 A No.
 5 Q Request Number 43, produce all
 6 documents and data relating to the conservation
 7 demonstration project conducted in the Beaty
 8 Creek sub-basin within the Eucha-Spavinaw
 9 Watershed. Did you identify any documents
 10 responsive to this request?
 11 A No.
 12 Q What divisions did you look in within
 13 ODEQ to try --
 14 A None.
 15 Q Is there a particular reason?
 16 A This belongs to the Conservation
 17 Commission.
 18 Q But did you check anywhere within your
 19 files to see if there was any documentation
 20 regarding this project?
 21 A No.
 22 Q Who directed you not to search within
 23 ODEQ's files for any documentation regarding
 24 Request Number 43?
 25 A We -- we -- no one directed me not to

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1 search.

2 Q Okay.

3 A This just is not our -- this is not our --
4 under our jurisdiction, so we don't have
5 documents related to this.

6 Q How did you come to that -- to that
7 specific determination? I mean, tell me the
8 process that that decision was made.

9 A I spoke with Barbara Rausch and with
10 David Pruitt.

11 Q Let's look at Request Number 44.
12 Request Number 44 asks that ODEQ produce all
13 documents and data related to any census of
14 animals within the Illinois River Watershed,
15 including livestock, poultry, and wildlife from
16 1980 to the present. Did you identify any
17 documents responsive to this request?

18 A No.

19 Q And is the -- did you undertake any
20 search through ODEQ records for anything
21 responsive to this request?

22 A No.

23 Q Did you -- and why did you not conduct
24 that search?

25 A After meeting Barbara and then David, we

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1 in the water quality division files here in this --
2 in Oklahoma City related to this request?

3 A Not to my knowledge.

4 Q Okay. So all the number, locations, use,
5 condition of potential environmental impact for
6 septic tanks and any other non-municipal
7 wastewater/sewage treatment system will be
8 located at these regional offices?

9 A Yes. That's right.

10 Q Okay. Tell me what kind of information
11 would be contained in those kinds of files located
12 in those regional offices?

13 A There will be complaints. No -- yeah,
14 complaints. There will be -- I'm sorry. Our
15 complaints are all centralized. I apologize. There
16 will be requests for services. There will be, oh,
17 gosh, just septic system layouts and those kinds
18 of things.

19 Q Okay. Do you have -- for those offices,
20 do you -- like here you have a records custodian
21 file plan.

22 A Uh-huh.

23 Q Is there any kind of file plan like this for
24 what might be contained regarding septic and
25 other non-municipal wastewater/sewage treatment

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1 determined that it was the Department of
2 Agriculture's jurisdiction.

3 Q Request Number 45 -- before I go into
4 Request Number 45, I've been informed that this is
5 -- Request Number 45, that there are documents
6 that are responsive to this request that are not
7 located here in Oklahoma City.

8 A That's correct.

9 Q That are located in Jay, Tahlequah, and
10 Roland?

11 A Correct.

12 Q Is that correct? Request Number 45 asks
13 for all documents and data related to the number,
14 locations, use, condition, and potential
15 environmental impact from septic and other
16 non-municipal wastewater/sewage treatment
17 systems within the Illinois River Watershed. Is
18 there any documentation here centrally located
19 responsive to this request?

20 A Yes.

21 Q Okay. And where in the files upstairs
22 would those be located?

23 A Those are the ECLS files boxes 1 through
24 8.

25 Q Okay. Are there any documents contained

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1 systems in Jay, Tahlequah, or Roland?

2 A No. They will be kept by address.

3 Q By address. Okay.

4 A Either by address or name, so it could be
5 under an individual's name.

6 Q Okay. And who manages those files there
7 at those regional offices?

8 A The local environmental specialists.

9 Q Okay. Can you tell me who the local
10 environmental specialist is for the Jay office?

11 A I cannot.

12 Q Tahlequah or Roland office?

13 A I'm sorry.

14 Q Have you had any conversations with any
15 of those individuals in those regional offices about
16 these specific documents?

17 A No.

18 Q Are they aware that there's a request to
19 your knowledge -- are you aware whether they
20 know that this request is out there for this
21 documentation?

22 A Not to my knowledge.

23 Q Okay. Has there ever been an instance
24 where the ODEQ has brought files from the
25 regional office to the main Oklahoma City office?

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1 A Not to my knowledge.
 2 Q Okay. Do you know what the store -- I
 3 mean, how long they store records with regards to
 4 septic and other non-municipal wastewater/sewage
 5 treatment systems?
 6 A The local offices?
 7 Q Uh-huh.
 8 A I do not.
 9 Q Okay. Do you know anything about their
 10 management system in those local offices?
 11 A As far as -- my understanding from the
 12 records custodian here is that they keep them
 13 forever, but I can't be sure.
 14 Q Okay. So other than what's located in
 15 ECLS boxes 1 through 8, those are the only
 16 documents that have been produced here which
 17 are responsive to this request?
 18 A That's correct.
 19 Q Okay. And have you been directed not to
 20 produce any of the complaints that are located --
 21 that are related to the septic and other
 22 non-municipal wastewater/sewage treatment
 23 systems in the Illinois River Watershed?
 24 A No.
 25 Q Well, that's a good question. Are what's

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1 Illinois River Watershed; and the dispute with
 2 certain members of the poultry industry including
 3 this lawsuit with any of the following: Any
 4 representative or employee or any other agency or
 5 subdivision of Oklahoma's government, any
 6 representative or employee of any university,
 7 whether public -- or public or private research
 8 institute, any contractor or consultant, and any
 9 other employee or representative of the ODEQ. So
 10 after that big long list, did you find anything
 11 responsive to Request for Production Number 46 in
 12 ODEQ's records?
 13 A We believe that could be in any of the
 14 records within any of the divisional boxes.
 15 Q So you believe any documents related to
 16 the condition and potential influences on the
 17 environment would be in -- could be in any of the
 18 divisions in any of the boxes produced?
 19 A Yes.
 20 Q Do you know whether any documents that
 21 relate to the condition and potential influence on
 22 the environment or natural resources have been
 23 excluded?
 24 A None. I mean, no.
 25 Q Okay. Sources of pollution or

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1 contained in the ECLS boxes 1 through 8, the
 2 complaints that are in those boxes, are they -- are
 3 there duplicative records contained in the regional
 4 offices of those or do they just get sent from the
 5 regional offices here?
 6 A No. All complaints come in through our
 7 hotline here at the central office.
 8 Q So there will be no complaint information
 9 at the regional office?
 10 A That's correct.
 11 Q Okay. Request Number 46 asks that
 12 ODEQ produce all documents related to any
 13 communication between representatives of the
 14 ODEQ relating to the condition and potential
 15 influences upon the environment and natural
 16 resources in the Illinois River Watershed; sources
 17 of pollution or degradation of the environment or
 18 natural resources in the Illinois River Watershed;
 19 potential remedies and/or action steps to address
 20 any pollution or degradation of the environment or
 21 natural resources in the Illinois River Watershed;
 22 potential or actual legislative or governmental
 23 actions to address operations and/or conditions in
 24 the Illinois River Watershed; the development and
 25 promulgation of the TMDL's for any waters in the

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1 degradation of the environment. You believe there
 2 are responsive documents that would be located in
 3 the box upstairs?
 4 A That's correct.
 5 Q Okay. Have you been directed not to
 6 produce any documents related to the sources of
 7 pollution or degradation of the environment in the
 8 Illinois River Watershed?
 9 A No.
 10 Q Okay. Are you saying there are
 11 documents that have been identified that relate to
 12 the potential remedies and/or action steps to
 13 address any pollution or degradation of the
 14 environment or natural resources in the Illinois
 15 River Watershed that would be located in the
 16 boxes upstairs?
 17 A Yes.
 18 Q Okay. Have you been directed not to
 19 produce any documents related to any of the items
 20 requested in Request Number 46?
 21 A No.
 22 Q Have you identified any electronic data
 23 that may be responsive to Request for Production
 24 Number 46?
 25 A Not at this time.

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1 Q Is there a search ongoing to identify
2 whether electronic data exists that hasn't been
3 produced in physical format upstairs that's
4 responsive to Request Number 46?

5 A Yes.

6 Q Let's take about a five or so minute
7 break.

8 (Short break at 4:28 p.m., resumed at
9 4:43 p.m.)

10 Q (BY MS. LONGWELL) I've got some
11 general questions I want to ask you. What is the
12 ODEQ's policy concerning document retention?

13 A We have an agency disposition schedule
14 for general files. We might have some specific
15 policies on how we keep them, but we may refer to
16 the state's general disposition schedule for
17 program files, for the different media. We have
18 guidelines that are assigned on the disposition
19 schedule that tell us the retention dates for all
20 documents and when the records can be destroyed
21 and that type of thing. So it depends on the
22 program.

23 Q When the state filed its action against
24 the defendants in June of 2005, did they direct
25 you to put a hold with regards to certain

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1 Q So is it safe to say then that all the
2 documents that have ever been created are pretty
3 much still there with regards to the Illinois River
4 Watershed that are responsive to these requests?

5 A That we were able to locate, yes. That's
6 correct.

7 Q And did you have any difficulties in
8 general about locating documents which are
9 responsive to this request, any problems?

10 A No.

11 Q Okay. What about with regards to your
12 ongoing electronic search? Have you had any
13 problems there?

14 A Not to my knowledge.

15 Q Okay. And you said Ray, Roy or Ray
16 Walker?

17 A Roy Walker.

18 Q Roy Walker is kind of handling that
19 aspect of it?

20 A Yes.

21 Q Okay. You indicated that, you know, you
22 kind of directed -- you helped me kind of
23 understand what the protocol was that you
24 utilized to find documents responsive to our
25 requests and you indicated that you -- in some

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1 documents within your file based under your
2 document retention policy?

3 A They did not specifically tell me to do
4 that, but as the records manager I knew that that
5 was -- anything in litigation is never destroyed.
6 It is held.

7 Q Okay. But were you able to try to
8 identify the breadth of that hold? I mean, how did
9 you determine what division documents you would
10 need to put a litigation type hold on the
11 destruction?

12 A Any records pertaining to this lawsuit, in
13 other words, any regarding the Illinois River Water
14 Basin within those counties, none of those records
15 could be destroyed.

16 Q Okay.

17 A All records destruction requests come
18 through me as records manager, so...

19 Q Have any of the documents which might
20 have been responsive to the requests that were
21 propounded by my client, Peterson Farms, did you
22 identify any that may have been destroyed as a
23 result of this -- you know, the agency's document
24 retention policy and document destruction policy?

25 A No.

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1 instances you had one-on-one conversations with
2 your own individuals that work beneath you, and
3 then some instances maybe with legal, and
4 sometimes with other division members. Once you
5 gathered all the documents and they were
6 identified by -- like they are upstairs where
7 they're identified by division and you've got box
8 numbers 1 through 72 for, like, the water quality
9 division, at that point in time, did you turn those
10 documents over to the state's counsel?

11 A At the time --

12 Q Once you identified what you believed to
13 be all the responsive documents responsive to our
14 requests, did you turn those over to the state's
15 counsel for their review?

16 A They have reviewed them. I don't know
17 that we turned them over.

18 Q Well, I just mean --

19 A Okay.

20 Q -- they reviewed them.

21 A Okay. Okay.

22 Q I know you didn't physically turn them
23 over.

24 A I'm sorry.

25 Q But, no, that's okay. It was a poor choice

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1 of words on my part, but I guess were you involved
2 in the state's review, you know, their attorney's
3 review --

4 A Yes.

5 Q -- of those documents?

6 A Yes.

7 Q Were you involved or directed by state's
8 counsel to remove any of the documents that were
9 identified -- that you had placed originally in
10 those boxes?

11 A No.

12 Q If documents were removed, were they
13 then removed for privilege purposes or whatever
14 where they were removed by state's counsel as
15 opposed to anyone working for you?

16 A That's correct.

17 Q So are you familiar with what documents
18 have been taken out of those boxes?

19 A No.

20 Q Or what privileges may have been
21 asserted over those documents?

22 A No.

23 Q At any time were you directed by any
24 attorney whether it be -- well, let me say it this
25 way, not an attorney. Have you been directed by

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1 Do you know who Robert Singletary is?

2 A Yes.

3 Q Who is --

4 A He's an AG from the AG's office.

5 Q Okay.

6 A He used to work here.

7 Q Matt Caves?

8 A Yes. He's an attorney for DEQ water
9 quality.

10 Q Okay. And Mark Hildebrand?

11 A I'm not sure of his title, but he is in
12 water quality.

13 Q Okay. Elena Jigoulina?

14 A Yeah. She's in water quality. I'm not
15 sure of her title.

16 Q Okay. Do you know who Martha Penisten
17 is?

18 A Yes. She's our assistant general counsel.

19 MS. LONGWELL: Okay. Because you've
20 indicated to me that your search is ongoing with
21 regards to some specific requests, both in physical
22 and electronic, I want to reserve the right to at
23 least at some point recall for a short deposition in
24 the event that I have questions with regards to
25 any additional documents identified that may be

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1 anyone to remove any documents, you and your --
2 the individuals that work for you have identified
3 as being responsive to those -- to our discovery
4 requests?

5 A No.

6 Q Do you know who Don Barrett is?

7 A Don Barrett, yes.

8 Q Who is he?

9 A He was a -- I don't know. He was either
10 an engineer or an intern. He used to work at the
11 agency.

12 Q Okay. What about Don Maisch?

13 A Yes. He is an attorney at the DEQ.

14 Q At DEQ?

15 A Uh-huh.

16 Q Carl Parrott?

17 A Yes. He's an engineer in water quality.

18 Q Wayne Craney?

19 A Engineer in water quality.

20 Q Steve Gunnels?

21 A He is in water quality. I'm not sure of
22 his title.

23 Q Okay. Glen Jones?

24 A Assistant director in water quality.

25 Q Okay. We've talked about David Pruitt.

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1 responsive to our requests. Because she's
2 indicated that they're searching for physical -- if
3 she's not involved in the search, obviously you
4 guys are not going to put her up probably as the
5 custodian, but I would like to continue the
6 deposition for that limited -- I mean, for that
7 purpose, for my limited purpose with regards to
8 that, but in the event that you identify physical
9 documents or electronic documents that she's
10 involved in identifying.

11 MR. NANCE: Well, under the rule, you're
12 entitled to one seven-hour day, and this is it. So
13 we're not going to continue this deposition. We
14 recognize we have the duty to supplement, and as
15 we locate additional responsive documents, we'll
16 figure out a way to get them to you. On the
17 electronic part, you know, I'm not handling that,
18 but we will get you the responsive electronic
19 material, but as far as keeping this deposition
20 open or reconvening it, you know, you've had your
21 day.

22 MS. LONGWELL: Well, and I'm just
23 stating on the record that I'm reserving the right
24 to do that, and if I have to go to the court to
25 continue the deposition, obviously I've made my

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1 record in order to do so.

2 MR. NANCE: I think our positions are
3 clear.

4 MS. LONGWELL: Give us one second,
5 please.

6 (Short break at 4:53 p.m., resumed at
7 4:56 p.m.)

8 MS. HILL: I would just like to make a
9 record that on behalf of Cargill, Inc., and Cargill
10 Turkey Production, LLC, that I reserve any right to
11 notice the deposition of the custodian of record of
12 the ODEQ relating to Cargill, Inc.'s first request
13 for production of documents, Cargill Turkey
14 Production's first request for production of
15 documents, and any additional discovery that
16 Cargill, Inc., or Cargill Turkey Production, LLC,
17 may propound just for the record.

18 MR. BOND: And I'm going to mirror
19 Cargill's objection, and add that that relates to
20 Tyson Foods, Inc., Tyson Poultry, Inc., and Tyson
21 Chicken, Inc., and Cobb-Vantress, Inc., in respect
22 to any and all document requests or
23 interrogatories which the state has referred back
24 through Rule 33D. With respect to documents
25 that are contained here at the Oklahoma

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1 but the records that we prepared are available to
2 all of the defendants, and you at least have
3 evidently elected to attend in reviewing, and on
4 behalf of Ms. Craig, she'll read and sign the
5 deposition.

6 (Deposition concluded at 4:59 p.m.)

7 * * * * *

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1 Department of Environmental Quality, Tyson and
2 these other Tyson entities reserve the right to
3 issue a severance regarding the records
4 custodian's deposition or a person at the
5 Oklahoma Department of Environmental Quality.

6 MR. THOMPSON: I'm going to join in and
7 mirror on behalf of George's, Inc., and George's
8 Farms, Inc., and I would also like to point out
9 that neither of those entities have served
10 discovery at this point and would also like to
11 reserve their right to serve up notice of a
12 deposition in this case.

13 MS. BRONSON: Simmons joins in the
14 objection, and if requests are propounded and
15 responses are given, Simmons obviously reserves
16 the right to schedule a deposition of the custodian
17 that's responsible for responding to those
18 requests.

19 MR. NANCE: Since everyone is reserving
20 their rights, we'll reserve our rights as well to
21 object at such time as any of those things is done.
22 George's, I assume, understands it's invited to
23 review the documents that are upstairs, and
24 whether or not you participate in that, that's up
25 to you, and Simmons has some requests, I think,

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1 JURAT
2 STATE OF OKLAHOMA VS. TYSON FOODS
3 STATE OF OKLAHOMA)
4)SS
5 COUNTY OF _____)

6 I, Rhonda Craig, do hereby state under
7 oath that I have read the above and foregoing
8 deposition in its entirety and that the same is a
9 full, true and correct transcription of my
10 testimony so given at said time and place, except
11 for the corrections noted.

12
13
14 RHONDA CRAIG

15
16 Subscribed and sworn to before me, the
17 undersigned Notary Public in and for the State of
18 Oklahoma, by said witness, on this, the ____ day
19 of _____, 2006

20
21
22 NOTARY PUBLIC

23 My Commission Expires: _____
24 (DLE) PR FILE #9833
25

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ERRATA SHEET
 STATE OF OKLAHOMA VS TYSON FOODS
 DEPOSITION OF RHONDA CRAIG
 REPORTED BY: DANIEL LUKE EPPS, CSR, RPR
 DATE DEPOSITION TAKEN: NOVEMBER 27, 2006
 PR FILE NO 9833

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CERTIFICATE
 STATE OF OKLAHOMA)
)SS:
 COUNTY OF OKLAHOMA)

I, DANIEL LUKE EPPS, Certified
 Shorthand Reporter within and for the State of
 Oklahoma, do hereby certify that the witness was
 by me first duly sworn to testify the truth, the
 whole truth and nothing but the truth, in the case
 aforesaid; taken in shorthand and thereafter
 transcribed; that the same was taken, pursuant to
 stipulations hereinbefore set out; and that I am
 not an attorney for nor relative of any of said
 parties or otherwise interested in the event of said
 action.

IN WITNESS WHEREOF, I have hereunto
 set my hand and seal this 7th day of December,
 2006.

 Daniel Luke Epps, CSR, RPR
 CSR No. 1841